United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,781

EVELYN R. ROBERTSON, JACK FRANKLIN, ROBERT L. MADDEN, MELVIN R. MAILLOUX, *Appellants*,

v.

STEWART L. UDALL, Secretary of the Interior, *Appellee*.

Appeal from a Judgment of the United States District Court for the District of Columbia

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BRIEF FOR EVELYN R. ROBERTSON, ET AL., APPELLANTS AND JOINT APPENDIX

SHAW, PITTMAN, POTTS, TROWBRIDGE & MADDEN
By MURDAUGH STUART MADDEN
910 - 17th Street, N.W.
Washington, D. C.

HOLMBERG AND POULSON
By JAMES S. HOLMBERG
1700 Broadway
Denver, Colorado

Attorneys for Appellants

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

QUESTIONS PRESENTED

1. Where the Secretary of the Interior has invited applications for oil and gas leases, may he, thereafter, in the total absence of any type of hearing, divest a citizen of his duly established statutory preference right to a lease on the basis of arbitrary conclusions of fact reached *ex parte* by the Secretary but disputed by the citizen.

2. Was summary judgment for the Secretary proper where each essential allegation upon which the Secretary's adverse decision was based was disputed by the citizen in affidavits which constituted the only testimony in the record.

INDEX

	Page
Jurisdictional Statement	1
Statement of Case	2
Statutes and Regulations Involved	6
Statement of Points	8
Summary of Argument	8
Argument:	
I. The Appellants Have a Right To Be Heard, Both as a Matter of Law and Constitutional Due Process	9
II. Summary Judgment Was Improper	15
Conclusion	16

TABLE OF CASES

Adams v. *Witmer*, 271 F. 2d 29 ..... 11, 13
Foster v. *Seaton*, 106 U.S. App. D.C. 253, 27 F. 2d 836 11
Haley v. *Seaton*, 108 U.S. App. D.C. 257, 281 F. 2d 620 12
Lynch v. *United States*, 292 U.S. 571 11
McKay v. *Wahlenmaier*, 96 U.S. App. D.C. 313, 255 F. 2d 35 ..... 10, 12
Poller v. *Columbia Broadcasting System*, 368 U.S. 464 15
Seaton v. *Texas Company*, 102 U.S. App. D.C. 171, 256 F. 2d 718 12
Shea v. *Second National Bank of Washington*, 76 U.S. App. D.C. 406, 133 F. 2d 17 15
Stevens, et al. v. *Howard D. Johnson Co.*, 181 F. 2d 390 15
Universal Camera Corporation v. *N.L.R.B.*, 340 U.S. 474 14
Wong Yang Sung v. *McGrath*, 339 U.S. 33 11

Page

STATUTES AND REGULATIONS

Administrative Procedure Act:

5 U.S.C. 1004 13
5 U.S.C. 1009 ..... 6, 13

Mineral Leasing Act of February 25, 1920, as amended, 41 Stat. 437:

Section 17 ..... 2, 6, 8

43 C.F.R. (1954 ed.) 192.42 (e)(4) 4, 7, 15

43 C.F.R. (1954 ed.) 192.42 (g) 8

DEPARTMENTAL DECISIONS

Northern Pacific Ry. Co., et al., 62 I.D. 401 12
United States v. *Keith V. O'Leary, et al.*, 63 I.D. 341 .. 11

MISCELLANEOUS

Decker, *Land Office Processing of Oil and Gas Lease Offers*, 5 Rocky Mt. Min. L. Inst. 77 12

S. Rep. No. 752, 79th Cong., 1st Sess. 14

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Appeal from a Judgment of the United States District Court for the District of Columbia

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BRIEF FOR EVELYN R. ROBERTSON, ET AL., APPELLANTS

JURISDICTION

On June 18, 1963, appellants filed a complaint (JA 1) in the United States District Court for the District of Columbia seeking judicial review of agency action under Section 10 of the Administrative Procedure Act (60 Stat. 243; 5 U.S.C., Sec. 1009). Jurisdiction was also invoked under the Declaratory Judgment Act (28 U.S.C., Sec. 2201)

and under Public Law 87-748, 87th Congress (28 U.S.C., Sec. 1361). Judgment was rendered April 14, 1964 granting defendant's motion for summary judgment and dismissing the complaint (JA 176). Notice of Appeal was filed June 10, 1964 (JA 177). The jurisdiction of this Court rests on 28 U.S.C., Sec. 1291.

STATEMENT OF CASE

By Notice published in the Federal Register July 29, 1958 (JA 12), the Secretary of the Interior, through his delegate, invited noncompetitive oil and gas lease offers covering a newly-opened area on Alaska's Arctic Slope. Responding to this invitation, and proceeding strictly in accordance with the notice, each of the four appellants filed lease offers and each now holds first priority for oil and gas leases under the Secretary's procedures for determining the prior applicant. Where the Secretary so chooses to grant an oil and gas lease, Section 17 of the Mineral Leasing Act, 41 Stat. 437, 30 U.S.C. 226(c) insures a preference right to the first qualified applicant.

Being unfamiliar with the Interior Department's complicated procedures for filing federal oil and gas lease offers, each appellant freely and separately retained Transwestern Investment Company, Inc. for the purpose of guaranteeing that each lease offer was properly filled out and filed in accordance with all pertinent regulations. Transwestern Investment Company, Inc., and its associate, John J. King, furnished geological guidance, prepared appellants' offers for them, and undertook the responsibility for proper delivery and filing thereof. Each appellant has sworn (JA 54-66, 88-91) that the tract described in his offer was selected by him; that he furnished his own funds; that, should he be successful in the drawing, he retained the right at all times to sell his lease himself and retain any and all profits; that he at all times remained in sole control of his offer; and that

he acted individually in his own right and in collusion with no one. As consideration for services rendered, each appellant paid a fee of $39.00, and offered Transwestern an opportunity to share in any profits which might be gained by the appellant should Transwestern arrange for a sale of the lease acceptable to appellant.

No appellant, either directly or indirectly, filed more than one offer on any tract of land. The agreement each appellant had with Transwestern was reflected by the affidavits which each appellant submitted to the district court (*supra*). *No other agreement was considered by either the Secretary or the district court.*

Each affidavit establishes that no appellant acted in concert with any other offeror, nor has it been suggested at any point in the proceedings that any appellant acted improperly or in bad faith. Indeed, the Bureau of Land Management specifically held that the offerors "had probably acted in good faith in filing their lease offers" (JA 16). Thus, the only basis suggested for denying appellants their statutory right to leases is the alleged collusion (Director's Decision of September 21, 1961, JA 14), or technical error (Solicitor's Decision of March 21, 1963, JA 28) of parties over whom the appellants had no direct control.

The Director did not allege that these appellants had violated any statute or regulation, but held that by virtue of what he called an "intensive investigation" by the Bureau of Land Management they were disqualified "because of the collusive manner in which they filed their lease offers". (This was in the same opinion where appellants were assumed to have acted in good faith.) The Solicitor made no mention of collusion as such, although he concurred with the Bureau's decision that the offerors were not the "real parties in interest" in their offers. The Solicitor suggested as an additional basis for the rejection of the offers the alleged technical

failure of appellants' agents to file agency statements pursuant to the Secretary's regulation 43 CFR 192.42 (e)(4). The appellants deny that this regulation applies to the facts of this case, which facts they have never yet been allowed properly to present.

The decisions of the Director and of the Solicitor were admittedly based solely upon the following documents:

(1) The lease offer files.

(2) The informal and unsworn statement of appellant Evelyn R. Robertson (JA 52).

(3) The informal and unsworn statement of appellant Melvin R. Mailloux (JA 66).

(4) The informal and unsworn statement of Jack M. Newman, Jr. (JA 153).

(5) The informal and unsworn statement of E. B. Heckel (JA 162).

(6) The informal and unsworn statement of John J. King (JA 92).

(7) Certain agreements which it was alleged (with no attempt to prove) these appellants signed with Transwestern Investment Company, Inc. prior to the filing of the lease offers.[1]

No statements of any kind were taken from the appellants Madden and Franklin. The statements of appellants Robertson and Mailloux were given freely and voluntarily at a time when no party had reason to suspect that the validity of his lease offer was in question. No counsel was present at the interrogations, nor did the Bureau's representative suggest that any answers might be used against the party's best interests.

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[1] In a letter addressed to appellants' counsel the Deputy Solicitor stated: "Our decision was based on these statements, the agreements between the offerors and Transwestern Investment Company, Inc., and the oil and gas lease offer files." (JA 137) No written agreements between these offerors and Transwestern were in the record.

Thus, the rejection of appellants' lease offers was based upon arbitrary conclusions admittedly drawn from:

(1) Alleged agreements, no copy of which was offered for the record or proved to have been signed by the appellants.

(2) The lease offer files, none of which were alleged to contain any questionable material.

(3) Certain informal and unsworn interrogations conducted by the Bureau's employee.

No opportunity was afforded the appellants by the Secretary to refute the allegations contained in his final administrative decision of March 21, 1963.

No sworn testimony was taken by the Department; no hearings were permitted.

Since no statements of any kind were taken from appellants Franklin and Madden, the Secretary's decision as to them is necessarily based upon mere surmise. Contrary to the Secretary's allegation, the statement of appellant Robertson (JA 52) established that she was the real party in interest.[2] Nothing was offered to impugn this statement. The affidavit of each appellant establishes his status as the real party in interest in his offer.

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[2] The following answers to questions propounded to Robertson by Mr. Kennedy, an investigator for the Bureau of Land Management, illustrate the true understanding of the parties with regard to the nature of the agency agreement:

> Mr. Kennedy: Q19: Who had exclusive control over your lease?
>
> Mrs. Robertson: I did.
>
> Mr. Kennedy: Q20: What part were you to play in any negotiations for the sale of any lease drawn by you?
>
> Mrs. Robertson: I had the right to approve or disapprove any deal—including the right to accept or reject any offer concerning overriding royalty interest.
>
> * * * * * *
>
> Mr. Kennedy: Q22: Did you feel that you had control over any leases you might draw? If so, what control did you exercise?
>
> Mrs. Robertson: I felt and still feel that I have complete control over my lease (Robertson Statement JA 54).

In the district court the appellants opposed appellee's motion for summary judgment on grounds that (a) the rejection of appellants' offers was arbitrary and unsupported by any substantial evidence; (b) a trial-type hearing to establish all pertinent facts, either before the court or before the Secretary on remand, is required if the parties are not to be deprived of substantial property rights without due process of law; and (c) summary judgment is improper in any event as a matter of law because the appellants submitted eleven well-documented genuine issues of fact, the prior determination of which in a proper proceeding is essential to summary judgment.

The district court rejected appellants' demand for a hearing on the facts. On April 14, 1964, judgment was entered without opinion granting defendant's motion for summary judgment (JA 176). This appeal followed.

STATUTES AND REGULATIONS INVOLVED

Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 437, 443, as amended, 30 U.S.C. (1958 Ed.), Sec. 226, provides as follows:

> All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits may be leased by the Secretary of the Interior . . .
>
> * * * * *
>
> When the lands to be leased are not within any known geological structure of a producing oil or gas field, the person making first application for the lease who is qualified to hold a lease under the Act shall be entitled to a lease of such lands without competitive bidding.

Section 10(e) of the Administrative Procedure Act, 60 Stat. 243; 5 U.S.C., Sec. 1009, states:

> (e) *Scope of review.*—So far as necessary to decision and where presented the reviewing court

> shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

The pertinent portion of the regulation referred to in this appeal, 43 CFR 192.42(e)(4) (1954 Ed.), stated:

> If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; . . .

Regulation 43 CFR 192.42(g) provided:

> An offer will be rejected and returned to the offeror and will afford the applicant no priority if . . .
>
> * * * * *
>
> the offer is signed by an attorney in fact or agent on behalf of the offeror and the offer is not accompanied by a statement over the offeror's own signature with respect to holdings and citizenship and by the statements and evidence required by paragraph (e)(4) of this section.

STATEMENT OF POINTS

1. The district court erred in rejecting appellants' demand for an opportunity to present their side of the case in a proper hearing, either before the district court or before the Secretary on remand.

2. The district court erred in granting appellee's motion for summary judgment where each essential allegation of fact upon which the motion was based was disputed in affidavits which constituted the only testimony in the record, and appellants had submitted a statement setting forth eleven genuine issues of fact.

SUMMARY OF ARGUMENT

1. The Mineral Leasing Act of 1920, from its inception, has awarded a statutory preference right to the first qualified applicant for a federal oil and gas lease wherever it has been determined by the Secretary that such land should be leased. This court has held that a published invitation by the Secretary soliciting lease offers exhausts his discretion as to selecting the lessee and the statute itself awards the lease to the first qualified applicant. Where the priority of a lease offeror is duly established, the Secretary is precluded from denying a lease arbitrarily on the basis of allegations of factual matters until such facts have been properly determined. A firm right to an oil and gas lease thus guaranteed by Congress is a valuable

property right which cannot be divested in the absence of full compliance with the requirements of the Administrative Procedure Act; but even apart from the Administrative Procedure Act, procedural fairness and equity demand that such rights not be divested arbitrarily and in the absence of substantial evidence, viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Secretary's view. It is the duty of the court to require that rejection by the Secretary of established preference rights be based upon competent and substantial evidence as applied to each individual case, and not upon implication, suspicion and surmise.

2. The moving party for summary judgment must show the absence of any genuine issue as to all material facts. The Secretary's decision was clearly based upon mere assumptions as to the relevant facts, unsupported by any substantial evidence, while appellants submitted abundant documentation, including uncontradicted sworn statements in opposition thereto. Summary judgment is only proper where all pleadings, affidavits and other factual material filed in the case demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. This is true even where there is no dispute as to the evidentiary facts in the case, but only to the conclusions to be drawn therefrom. Therefore, summary judgment was improper.

ARGUMENT

I. The Appellants Have a Right to be Heard, Both as a Matter of Law and Constitutional Due Process

Responding to the Secretary's published invitation, each of the appellants, acting in entire good faith,[3] submitted bona fide oil and gas lease offers. Under departmental procedures for establishing priority, each appellant is now

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[3] The Directors decision so stated. (JA 16)

the first qualified applicant for the tracts individually applied for. Notwithstanding, the Secretary of the Interior, without benefit of any hearing, has arbitrarily rejected appellants' offers because of the alleged conduct of other persons.

Each appellant, to the extent of his own personal knowledge, has denied the Secretary's allegations in sworn affidavits. Either the Secretary's allegations or these affidavits are false in essential particulars.

The nature of the appellants' statutory preference right was succinctly summarized by Judge Miller in his opinion for this court in *McKay* v. *Wahlenmaier,* 96 U.S. App. D.C. 313, 255 F. 2d 35, 47 (1955):

> Whether to offer land for lease is a discretionary matter with the Secretary. But, having invited applications for a noncompetitive lease, he has no discretion as to selecting the lessee; the statute awards the lease to the first qualified applicant. That is to say, it is then the plain legal duty of the Secretary to perform the merely ministerial act of issuing a lease to such applicant. When, as in this case, the Secretary refuses to perform that act, under a familiar and well-established principle the courts may mandatorily order him to do that which the statute requires him to do and about which he has no discretion.

Here, exactly as in *Wahlenmaier,* the Secretary exercised his discretion, and exhausted it, by publicly soliciting offers for leases. Unlike *Wahlenmaier,* and unlike most other cases heretofore before this court, no lease has been wrongly issued and no rights of others are involved. None has contended that the appellants are not first. Thus, the only question is whether they are qualified. Considering the dignity of the statutory right, the Secretary must be precluded from denying appellants' qualifications arbitrarily, without substantial evidence and without a full opportunity for a hearing.

This court has said that a locator of a mining claim has only taken "the initial steps in seeking a gratuity from the Government." *Foster* v. *Seaton*, 106 U.S. App. D.C. 253, 271 F. 2d 836 (1959). One cannot suppose that a firm preference right to a valuable oil and gas lease, solidly protected by statute, would be less dignified than that. The Secretary of the Interior has held that the claim of a mineral locator may not be rejected without an adequate hearing in accordance with due process of law. An ordinary hearing is not enough—it must comply with all the requirements of the Administrative Procedure Act even though no statute requires such a hearing. *United States* v. *Keith V. O'Leary, et al.*, 63 I.D. 341 (1956). In so holding, the Secretary properly accepted as to public land matters the well known rule of *Wong Yang Sung* v. *McGrath*, 339 U.S. 33 (1950).

In *Adams* v. *Witmer*, 271 F. 2d 29 (9th Cir. 1958), the *O'Leary* decision received judicial approval. It was held that the constitutional requirements of due process demand a proper hearing before a mining claim is rejected. The appellant there had received a hearing, but he specifically invoked the Administrative Procedure Act with regard to requirements of the Act prohibiting decisions by officers engaged in investigative and prosecuting functions, requiring decisions to be made by the officer who heard the evidence, and providing opportunity to propose findings. The court found the Administrative Procedure Act applicable, both with respect to the Interior Department's procedure and the right to judicial review—even though no statute required hearings. In the present case, no evidence, as such, was taken, aside from an informal, *ex parte* interrogation by the Bureau's agent. No appellant and no representative of appellants was ever allowed to face a deciding officer.

The rule of law and of constitutional right represented by *Adams* v. *Witmer* and the *O'Leary* case applies here. Lease contracts are property. *Lynch* v. *United States*,

292 U.S. 571, 579 (1934). A firm right to a lease, guaranteed by Congress, is thus a property right. The statutory right of one who has been established as the prior applicant for an oil and gas lease warrants at least as much protection from procedural due process as the asserted right of one who has only taken the initial steps in seeking a gratuity from the Government.

Prior to *O'Leary* the Secretary (without judicial concurrence) denied hearings with respect to *discretionary* issuance of oil and gas leases because no specific statute required a hearing. *Northern Pacific Ry Co., et al.*, 62 I.D. 401 (1955). Even so, in the rare cases where facts were in dispute, hearings were the rule.[4] With judicial concurrence (*Haley* v. *Seaton*, 108 U.S. App. D.C. 257, 281 F. 2d 620 (1960)) the Secretary has refused to issue leases when to do so would not be in the public interest. But here the Secretary *invited* lease offers, and exercised his discretion as to whether or not to lease *before offers were filed*. He made it clear that a lease would be issued. Thereupon his discretion ended. *McKay* v. *Wahlenmaier*, *supra*.

This court never hesitated to intervene when the question was one of procedural fairness by the Secretary[5] even where no substantive constitutional right of due process was involved. Here, as in *Seaton* v. *The Texas Company*, the court need not direct the district court or an unwilling Secretary to dispose of an interest in public lands. The Secretary has already decided to do so. The court need only direct the district court and the Secretary not to divest valuable rights without substantial evidence and proper hearings.

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[4] "In nearly all oil and gas appeals the facts are not in dispute . . . In any case in which the facts are in dispute a hearing is usually set." Decker, *Land Office Processing of Oil and Gas Lease Offers*, 5 ROCKY MT MIN L. INST. 77, 92. (1960)

[5] *Seaton* v. *Texas Co.*, 102 U.S. App. D.C. 171, 256 F. 2d 718 (1958); *McKay* v. *Wahlenmaier*, 96 U.S. App. D.C. 313, 256 F. 2d 35 (1955).

In *O'Leary* the Secretary overruled Interior Department precedent and adopted the rule that the inherent demands for due process place such factual determinations as are here involved within the requirements of Section 5 of the Administrative Procedure Act,[6] with or without a statutory requirement for such a hearing. In *Adams* v. *Witmer* the United States Court of Appeals for the Ninth Circuit reached the same conclusion, and emphasized it. Thus, we are led to Section 10(e) of that Act,[7] where the reviewing court is required to ". . . (B) hold unlawful and set aside agency action, findings and conclusions found to be (1) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege or immunity; . . . (5) unsupported by substantial evidence . . ."

Each appellant contends that the Secretary's refusal to honor his statutory preference right was (1) arbitrary and capricious; (2) contrary to the constitutional right of due process; and (3) unsupported by substantial evidence. Appellants Madden and Franklin were not even informally interviewed. Appellants Robertson and Mailloux were informally interviewed, but were not advised that their interests were suspect. No one has yet suggested the appellants were guilty of any error or wrongdoing, yet not one line of testimony was allowed prior to the attempted divestment of their established preference rights. Arbitrary and capricious? Yes. Contrary to constitutional right of due process? Yes. As for the nature of the "evidence" considered by the Secretary, the comment of the Senate Judiciary Committee is appropriate:

> The difficulty comes about in the practice of agencies to rely upon (and the courts to tacitly approve) some-

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[6] 60 Stat. 237, 240; 5 U.S.C. Sec. 1004.

[7] 60 Stat. 243; 5 U.S.C. Sec. 1009.

> thing less—to rely upon suspicion, surmise, implications or plainly incredible evidence. It will be the duty of the courts to determine in the final analysis and in the exercise of their independent judgment, whether on the whole record the evidence in a given situation is sufficiently substantial to support a finding, conclusion or other agency action as a matter of law. *S. Rep. No. 752*, 79th Cong., 1st Sess. 30-31.

The Supreme Court has recognized that the enforcement of such broad standards by the courts will require "subtlety of mind and solidity of judgment". *Universal Camera Corporation* v. *N.L.R.B.*, 340 U.S. 474, 487 (1950). Nevertheless, it was held that the federal judiciary has the duty to demand substantial evidence in administrative proceedings and that, in the words of Mr. Justice Frankfurter,

> A reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view.

It is obvious from the record of this case that the Secretary's deciding officer relied upon something considerably less than substantial evidence. Implication, suspicion and surmise have no place in any form of adjudication—and the Congress required the courts to review and correct such procedures wherever found. The record in this case is composed mostly of affidavits and other factual material submitted by the appellants. If that material is accurate, the Secretary's decision is plainly wrong. Each appellant is individually entitled, as a matter of law, as a matter of equity, and as a matter of constitutional right, to an opportunity to present his case in a proper hearing.

II. Summary Judgment Was Improper

The Secretary, as the moving party for summary judgment, had the burden of showing the absence of any genuine issue as to all material facts. Appellants submitted abundant documentation, including uncontradicted sworn statements, establishing the many factual issues which must necessarily be resolved before any fair judgment can be rendered. In considering a motion for summary judgment the court must look at the record in the light most favorable to the party opposing the motion, and "summary judgment should be rendered only when the pleadings, depositions, affidavits and admissions filed in the case 'show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law'. Rule 56(c), Fed. Rules Civ. Proc." *Poller* v. *Columbia Broadcasting System*, 368 U.S. 464 (1962). And this is true even where there is no dispute as to the evidentiary facts in the case, but only as to the conclusions to be drawn therefrom. *Stevens, et al.* v. *Howard D. Johnson Co.*, 181 F. 2d 390 (4th Cir. 1950).

In *Shea* v. *Second National Bank of Washington*, 76 U.S. App. D.C. 406, 133 F. 2d 17 (1942), this court considered a case involving an agency contract for sale of realty where the agreement was not made a part of the record. Summary judgment was held improper because the court had no copy of the executed contract before it, and therefore could not determine the effect of the agreement. In the case here under appeal, the Secretary based his decision upon alleged agreements which were never proved. Determinations as to who were the real parties in interest in the several offers and whether or not the Regulation 43 CFR 192.42(e)(4) applied to any one or all of the four appellants are among the variable matters of fact which must necessarily be determined before summary judgment can be proper.

CONCLUSION

For the foregoing reasons the appellants submit that the Secretary's rejection of their lease offers was arbitrary and capricious, contrary to the constitutional and statutory rights of the appellants to a fair hearing, and unsupported by substantial evidence. The district court erred in denying appellants' demand for a hearing, and the District Court also erred in granting summary judgment for the appellee because of the numerous issues of fact which were presented to the court and supported by abundant documentation. Accordingly, appellants pray that the judgment below be reversed with instructions to the district court to assure to each of the appellants an opportunity to present the true facts of his case, either to the district court or to the Secretary of the Interior on remand.

Respectfully submitted,

SHAW, PITTMAN, POTTS, TROWBRIDGE
& MADDEN

By MURDAUGH STUART MADDEN
910 - 17th Street, N.W.
Washington, D. C.

HOLMBERG AND POULSON

By JAMES S. HOLMBERG
1700 Broadway
Denver, Colorado

Attorneys for Appellants

INDEX TO JOINT APPENDIX

	Page
Complaint	1
Answer	41
Defendant's Statement of Material Facts	43
Defendant's Motion for Summary Judgment	50
Index of Plaintiffs' Exhibits	51
Exhibit A-1	52
Exhibit A-2	54
Exhibit A-3	57
Exhibit B-1	59
Exhibit B-2	61
Exhibit C-1	62
Exhibit C-2	65
Exhibit D-1	66
Exhibit D-2	88
Exhibit D-3	90
Exhibit E-1	92
Exhibit E-2	109
Exhibit F-1	136
Statement of Genuine Issues	139
Ritvo Affidavit	141
Appellants' Consolidated Statement of Reasons for Appeal	142
Judgment	176
Notice of Appeal	177

JOINT APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 1561-63

EVELYN R. ROBERTSON, P.O. Box 1184, Dallas, Texas; JACK FRANKLIN, 6823 Prestonshire, Dallas, Texas; ROBERT L. MADDEN, 1514 Commerce Street, Dallas, Texas; and MELVIN R. MAILLOUX, 826 Lopey Sicando, Des Pines, Rio Piedras, P.R., *Plaintiffs,*

v.

STEWART L. UDALL, Secretary of the Interior, *Defendant.*

Complaint for Mandamus and Other Relief

COUNT I

Claims for Relief of the Plaintiff Evelyn R. Robertson

For her claims against the Defendant, the Plaintiff, Evelyn R. Robertson, states as follows:

1. This is a civil action against the Defendant as an officer of the United States, whose official residence as Secretary of the Interior, is in the District of Columbia.

It is an action in the nature of mandamus to compel the Defendant as an officer of the United States to perform a duty owed to this Plaintiff.

The property here involved is real property located in the State of Alaska, the value of which, exclusive of any interest and costs, exceeds $10,000.00.

The original jurisdiction of this Court to grant relief in the nature of mandamus is grounded upon both its powers and duties to enforce domestic law as derived from the

laws of the State of Maryland and upon Public Law 87-748, 87th Congress; 76 Stat. 744; 28 U.S.C. 1361.

2. This is also a civil action brought by this Plaintiff for judicial review of agency action under Section 10 of the Administrative Procedure Act (60 Stat. 243; 5 U.S.C. 1009) to which this Plaintiff is entitled, as is hereinafter more fully set forth, as a person who has suffered legal wrong because of agency action, or as a person who has been adversely affected or aggrieved by such action within the meaning of a relevant statute, namely Section 17 of the Mineral Leasing Act of February 25, 1920, 41 Stat. 443, as amended to and including the Act of August 8, 1946, 60 Stat. 950.

3. This is also a civil action brought by this Plaintiff under the Federal Declaratory Act of June 25, 1948, (62 Stat. 964, as amended to and including Public Law 85-508, § 12(p), 72 Stat. 349, 28 U.S.C. 2201), so that this Court may declare the rights and other legal relations of this Plaintiff in a case of actual controversy, as is hereinafter more fully set forth, with the Defendant.

4. This Plaintiff has, as is hereinafter more fully set forth, exhausted all administrative remedies.

5. The circumstances, occurrences and events in support of the claims of this Plaintiff, which are matters of administrative record and the only matters of administrative record to which this Plaintiff has been afforded access, are stated as follows:

5.1 By a certain Notice, dated July 24, 1958, duly published in the Federal Register on July 29, 1958 (23 F. R. 5700), a true copy of which Notice is annexed to this Complaint as Exhibit "A", the Defendant, by his delegate, gave notice that approximately 4,000,000 acres of land owned by the United States in the Gubik-Umiat area on the Artic Slope of Alaska were to become subject to noncompetitive oil and gas leasing by the Defendant.

5.2 In full compliance with the requirements specifically stated in this Notice and in full compliance with the laws and regulations to which reference was therein made, this Plaintiff duly submitted and caused to be timely filed a properly filled in and executed offer to accept a lease on Form 4-1158, requesting as a designated leasing block

T. 3 S., R. 3 E., U. P. M.
Block 2

together with the filing fee and first year's advance rental as required in such Notice. All conditions precedent to the existence of this Plaintiff's statutory right to obtain this lease had been performed by this Plaintiff, or had occurred, subject only to the fortunes of this Plaintiff at the drawing to be held pursuant to such Notice.

5.3 A drawing was held on October 1, and 2, 1958, in the Land Office at Fairbanks, Alaska, at which the Manager announced and followed a procedure whereby from each group of filings for the various leasing blocks a first priority and two alternates would be selected and all other additional offers in their respective sealed envelopes would be returned, without any record being kept of such offers, to the respective offerors.

5.4 This Plaintiff's offer to accept a lease, assigned the Serial Number Fairbanks 021494, was drawn number one as to the leasing block requested and was assigned first priority therefor.

5.5 Thereafter, before any leases were issued, one Duncan Miller, on or about October 22 and 28, 1958, filed over the counter at such Land Office certain offers in conflict with certain of the offers of the first priority and alternate drawees.

5.6 One of these Duncan Miller offers conflicted with the first priority offer of this Plaintiff, namely her offer Fairbanks 021494.

5.7 Thereafter, on or about November 7, 1958, Duncan Miller filed a protest against the prior offers as drawn on October 1, 1958. By decision, dated May 29, 1959, the Manager of the Fairbanks Land Office dismissed the protest, holding that since there was no evidence in support of Miller's allegation of collusion, there was nothing in the record to show that each prior offeror was not acting for herself or himself, as the case might be, alone, or was not otherwise qualified to file an offer or hold a lease.

5.8 Miller thereafter appealed to the Director, Bureau of Land Management. By decision, dated September 21, 1961, a true copy of which is annexed to this Complaint as Exhibit "B", a Legal Assistant for the Division of Appeals reversed the decision of the Manager of the Fairbanks Land Office, described in subparagraph 5.7 of Paragraph 5 of this Complaint, holding that this Plaintiff's offer, namely Fairbanks 021494, together with four other offers assigned serial numbers (which other four offers are not involved in this action) must be rejected, further holding that since the conflicting offerors, and their alternates, are disqualified because of the "collusive manner" in which they filed their offers, Duncan Miller is the "first qualified applicant for the lands."

5.9 By a Supplemental Decision, dated March 16, 1962, a true copy of which is annexed to this Complaint as Exhibit "C", the Chief, Branch of Mineral Leasing Appeals, being the same person who signed the Decision described in subparagraph 5.8 of Paragraph 5 of this Complaint, provided that that Decision be also served upon certain alternate drawees, naming the Plaintiffs herein Robert L. Madden and Melvin R. Mailloux.

5.10 Each of the Plaintiffs herein thereupon appealed to the Defendant. The appellant and Plaintiff herein, Evelyn R. Robertson, maintained that she was as to her offer to lease at all times the person first making application for the lease who is qualified to hold the lease under

Section 17 of the Mineral Leasing Act; the appellants and Plaintiffs herein, Jack Franklin, Robert L. Madden, and Melvin R. Mailloux, each maintained for himself that he was the holder of the second priority as to the offer to lease; that as such a person, each appellant had by law a preference to such a lease and that such statutory preference right must be recognized; that each of the appellants was at all material times the real party in interest in such appellant's lease offer and that none of the appellants had at any time been given an opportunity for a hearing or any other change to present such appellant's case.

5.11 By Decision, dated March 21, 1963, a true copy of which is annexed to this Complaint as Exhibit "D", the Defendant, through his Solicitor, Frank J. Barry, finally rejected each of the offers to lease of each of the Plaintiffs herein, and further finally rejected the conflicting offers of Duncan Miller.

6. The various decisions, culminating in the Decision of the Defendant, all as described in Paragraph 5 of this Complaint, represent agency action, and contain findings and conclusions, which are arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law or applicable regulations.

Such decisions, and the agency action represented thereby, are contrary to the constitutional rights, powers, privileges, and immunities of this Plaintiff.

Such decisions, and the agency action represented thereby, are in excess of statutory jurisdiction, authority, and limitations, and they are short of statutory right.

Such decisions, and the agency action represented thereby, are without observance of procedure required by law, are unsupported by sufficient evidence and are unwarranted by the facts.

WHEREFORE, this Plaintiff, Evelyn R. Robertson, prays:

1. That this Court hold as unlawful and set aside the Decision of the Defendant, as described in subparagraph 5.11 of Paragraph 5 of Count I of this Complaint.

2. That this Court order and compel the Defendant to recognize his statutory duty to this Plaintiff and to issue to her a non-competitive lease for oil and gas pursuant to her offer Fairbanks 021494.

3. For such and other further relief as this Court shall deem just.

COUNT II

Claims for Relief of the Plaintiff Jack Franklin

For his claims against the Defendant, the Plaintiff, Jack Franklin, states as follows:

1. He is a person who, as is hereafter more fully set forth, asserts rights severally in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and where a question of law or fact common to the claims of the other Plaintiffs herein will arise.

2. This Plaintiff restates each and all of the averments contained in Paragraph 1, 2, 3 and 4 and subparagraph 5.1 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

3. In full compliance with the requirements specifically stated in this Notice and in full compliance with the laws and regulations to which reference was therein made, this Plaintiff duly submitted and caused to be timely filed a properly filled in and executed offer to accept a lease on Form 4-1158, requesting as a designated leasing block

T. 1 S., R. 3 E., U. P. M.
Block 6

together with the filing fee and first year's advance rental as required in such Notice. All conditions precedent to the existence of this Plaintiff's statutory right to obtain this lease had been performed by this Plaintiff, or had occurred, subject only to the fortunes of this Plaintiff at the drawing to be held pursuant to such Notice.

4. This Plaintiff restates each and all of the averments of subparagraph 5.3 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

5. This Plaintiff's offer to accept a lease, which was not assigned a serial number, was drawn number two as to the leasing block requested and was assigned second priority therefor.

6. This Plaintiff restates each and all of the averments of subparagraph 5.5 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

7. This Plaintiff avers that at least one of the Duncan Miller offers conflicted with his second priority offer.

8. This Plaintiff restates each and all of the averments of subparagraphs 5.7, 5.8, 5.9, 5.10, and 5.11 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

9. This Plaintiff is now the holder of the number one priority as to the leasing block requested by him.

10. This Plaintiff restates each and all of the averments of Paragraph 6 of Count I of this Complaint with like effect as if herein fully repeated.

WHEREFORE, this Plaintiff, Jack Franklin, prays:

1. That thtis Court hold as unlawful and set aside the Decision of the Defendant, as described in subparagraph 5.11 of Paragraph 5 of Count I of this Complaint.

2. That this Court order and compel the Defendant to recognize his statutory duty to this Plaintiff and to issue

to him a non-competitive lease for oil and gas pursuant to his presently existing first priority position.

3. For such and other further relief as this Court shall deem just.

Count III

Claims for Relief of the Plaintiff Robert L. Madden

For his claims against the Defendant, the Plaintiff, Robert L. Madden, states as follows:

1. He is a person who, as is hereafter more fully set forth, asserts rights severally in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and where a question of law or fact common to the claims of the other Plaintiffs herein will arise.

2. This Plaintiff restates each and all of the averments contained in Paragraphs 1, 2, 3 and 4 and subparagraph 5.1 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

3. In full compliance with the requirements specifically stated in this Notice and in full compliance with the laws and regulations to which reference was therein made, this Plaintiff duly submitted and caused to be timely filed a properly filled in and executed offer to accept a lease on Form 4-1158, requesting as a designated leasing block

T. 1 S., R. 5 E., U. P. M.
Block 7

together with the filing fee and first year's advance rental as required in such Notice. All conditions precedent to the existence of this Plaintiff's statutory right to obtain this lease had been performed by this Plaintiff, or had occurred, subject only to the fortunes of this Plaintiff at the drawing to be held pursuant to such Notice.

4. This Plaintiff restates each and all of the averments of subparagraph 5.3 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

5. This Plaintiff's offer to accept a lease, which was not assigned a serial number, was drawn number two as to the leasing block requested and was assigned second priority therefor.

6. This Plaintiff restates each and all of the averments of subparagraph 5.5 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

7. This Plaintiff avers that at least one of the Duncan Miller offers conflicted with his second priority offer.

8. This Plaintiff restates each and all of the averments of subparagraphs 5.7, 5.8, 5.9, 5.10, and 5.11 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

9. This Plaintiff is now the holder of the number one priority as to the leasing block requested by him.

10. This Plaintiff restates each and all of the averments of Paragraph 6 of Count I of this Complaint with like effect as if herein fully repeated.

WHEREFORE, this Plaintiff, Robert L. Madden, prays:

1. That this Court hold as unlawful and set aside the Decision of the Defendant, as described in subparagraph 5.11 of Paragraph 5 of Count I of this Complaint.

2. That this Court order and compel the Defendant to recognize his statutory duty to this Plaintiff and to issue to him a non-competitive lease for oil and gas pursuant to his presently existing first priority position.

3. For such and other further relief as this Court shall deem just.

Count IV

Claims for Relief of the Plaintiff Melvin R. Mailloux

For his claims against the Defendant, the Plaintiff, Melvin R. Mailloux, states as follows:

1. He is a person who, as is hereafter more fully set forth, asserts rights severally in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and where a question of law or fact common to the claims of the other Plaintiffs herein will arise.

2. This Plaintiff restates each and all of the averments contained in Paragraphs 1, 2, 3 and 4 and subparagraph 5.1 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

3. In full compliance with the requirements specifically stated in this Notice and in full compliance with the laws and regulations to which reference was therein made, this Plaintiff duly submitted and caused to be timely filed a properly filled in and executed offer to accept a lease on Form 4-1158, requesting as a designated leasing block

T. 3 N., R. 19 E., U. P. M.
Block 7

together with the filing fee and first year's advance rental as required in such Notice. All conditions precedent to the existence of this Plaintiff's statutory right to obtain this lease had been performed by this Plaintiff, or had occurred, subject only to the fortunes of this Plaintiff at the drawing to be held pursuant to such Notice.

4. This Plaintiff restates each and all of the averments of subparagraph 5.3 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

5. This Plaintiff's offer to accept a lease, which was not assigned a serial number, was drawn number two as to the leasing block requested and was assigned second priority therefor.

6. This Plaintiff restates each and all of the averments of subparagraph 5.5 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

7. This Plaintiff avers that at least one of the Duncan Miller offers conflicted with his second priority offer.

8. This Plaintiff restates each and all of the averments of subparagraphs 5.7, 5.8, 5.9, 5.10, and 5.11 of Paragraph 5 of Count I of this Complaint with like effect as if herein fully repeated.

9. This Plaintiff is now the holder of the number one priority as to the leasing block requested by him.

10. This Plaintiff restates each and all of the averments of Paragraph 6 of Count I of this Complaint with like effect as if herein fully repeated.

WHEREFORE, this Plaintiff, Melvin R. Mailloux, prays:

1. That this Court hold as unlawful and set aside the Decision of the Defendant, as described in subparagraph 5.11 of Paragraph 5 of Count I of this Complaint.

2. That this Court order and compel the Defendant to recognize his statutory duty to this Plaintiff and to issue to him a non-competitive lease for oil and gas pursuant to his presently existing first priority position.

3. For such and other further relief as this Court shall deem just.

J. ROBERT FOWLER
J. Robert Fowler
1700 Broadway
Denver 2, Colorado
Area Code 303-266-3731

ROYALL, KOEGEL & ROGERS

By .....
1730 K Street, N. W.
Washington 6, D. C.
Area Code 202-338-7760

Attorneys for Plaintiffs

"EXHIBIT A"

ALASKA

NOTICE OF AVAILABILITY OF LANDS FOR NON-COMPETITIVE OIL AND GAS LEASING

July 24, 1958.

Notice is hereby given that there have been filed in the Land Offices, Bureau of Land Management, Anchorage and Fairbanks, Alaska, and in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington 25, D. C., approved maps describing by leasing blocks approximately 4,000,000 acres of land in specified townships within the area described in section 1 of Public Land Order 1621, which are now available for noncompetitive oil and gas leasing. Such maps may be examined at those offices during the regular business hours. A portfolio containing an index map and leasing maps may be purchased from such offices for $1.50. This portfolio also contains a leasing map of the lands in the Gubik gas field which will be subject to competitive leasing only.

1. Approximately 4,000,000 acres of land will become subject to noncompetitive oil and gas leasing on the date of publication hereof. These lands are designated on said maps as separately numbered leasing blocks, in the specified townships, not exceeding 2,500 acres each.

2. All leasing will be subject to the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437); Public Land Order 1621, dated April 18, 1958; the regulations in 43 CFR, Part 192, and the provisions hereof.

3. All offers to lease must be submitted on Form 4-1158 and in accordance with the regulations 43 CFR 192.42. Each offeror may file only one offer for each separate leasing block.

4. The lands applied for must be described according to the leasing blocks in the specified townships shown on the

approved maps, notwithstanding the provisions of 43 CFR 71.2 and 43 CFR 192.42(d). Each entire leasing block is deemed and declared to be a legal subdivision subject to the restrictions on assignment of a part thereof as provided for in the regulation 43 CFR 192.140.

5. Each offer must be filed in a separately sealed envelope which sealed envelope must contain a $10 filing fee and the first year's advance rental at the rate of 50 cents per acre in accordance with the provisions of Public Law 85-505 enacted July 3, 1958, and have endorsed on its face the name and address of the offeror, and the description of the land applied for by leasing block number and township. Each offer must include the rental payment for the full acreage of the leasing block including any water area shown on the leasing map. Any offers not so submitted will be rejected and returned to the offeror.

6. All offers must be filed in the Land Office, Bureau of Land Management (P. O. Box 1050), Fairbanks, Alaska. All offers received in the above-noted Land Office from the date of publication hereof and until 10 a.m. of the 60th day thereafter, will be considered as having been simultaneously filed. The priorities of all conflicting offers will be determined in accordance with the procedure outlined in the regulation 43 CFR 295.8 and the sealed envelopes referred to in the preceding paragraph will be returned unopened to the unsuccessful offerors.

EARL J. THOMAS,
Acting Director.

(F. R. Doc. 58-5809; Filed, July 25, 1958; 3:26 p. m.)

"EXHIBIT B"

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

In reply refer to:
Fairbanks 022139
022140
022141
022142
022198
6.05c
CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

DECISION

September 21, 1961
Oil and Gas

DUNCAN MILLER

Decision Reversed
Oil and Gas Lease Offers Rejected

Mr. Duncan Miller has appealed from a decision dated May 29, 1959, which dismissed his protest against the issuance of oil and gas leases in connection with prior offers in conflict with the above-identified offers filed by him under the Mineral Leasing Act, as amended (30 U.S.C. 1958 ed., sec. 226).[1] The appellant in his protest, claims that the offerors in the conflicting lease offers are not qualified to hold leases, because all of them used the same address from which to make application for the land in question.

The records show that the appellant's lease offers were filed subsequent to a drawing held on October 1, 1958 for lands in the Gubik-Umiat area of Alaska. At this drawing the offers, against which the appellant filed his protest,

[1] The names, addresses, and serial numbers of the conflicting lease offers are shown on the attached appendix.

were drawn with number one priority, with two alternates selected for each block of the applied for lands. The records further show the address of the successful drawees, including the alternates, to be Box 1161, Dallas, Texas at the time the offers were filed.[2]

The appellant contends, in substance, in his appeal, that due to the evident collusion among the conflicting offerors, because all of their offers were mailed from Box 1161, Dallas, Texas, they are not qualified offerors. The appellant asserts that, in addition to the offers protested by him, there were more offers filed from the same address, the exact number being unknown since the land office would not divulge such information to him. He contends that it is the duty of the Bureau of Land Management to put a stop to such corrupt practices and exploitation. The appellant asserts that he is the first qualified applicant for the lands involved, and is entitled to leases therefor.

As a result of the protest filed by Mr. Miller, the Bureau conducted an intensive investigation of the filing of the large number of applications by applicants using the Box 1161, Dallas, Texas, address, in order to determine if there was, in fact, a commission of fraud or collusion in the filing of such applications.

Evidence obtained during the investigation establishes that the real parties in interest in the oil and gas lease offers in question, and in leases obtained by reason of such offers, are the Transwestern Investment Company, Inc., whose address was, at the time the offers were filed, P. O. Box 1161, Dallas, Texas, and Mr. John J. King, whose address is 1700 Broadway, Denver, Colorado. The record shows that Mr. King originated the idea of interesting a number of persons in filing oil and gas lease offers in the Gubik area of Alaska. Through a mutual friend, Mr. Melvin R. Maillaux, at the time Vice-President of the Transwestern Investment Company, Inc., some 59 persons were

[2] The addresses of some of these persons have since been changed. See appendix.

found who were willing to file 39 applications each, involving 2,560 acres in each application, as described in certain leasing blocks provided for in the order opening the Gubik area to oil and gas leasing. The record also shows that Mr. Maillaux and his wife, each filed 39 applications for lands in the same area. Each of the offerors, signed their lease offer forms in blank, which were later filled out in the office of Mr. King in Denver, Colorado, as to the description of the lands and other details. Each offeror also signed blank assignments to the Transwestern Investment Company, Inc. It appears that each offeror also signed an agreement with the Transwestern Investment Company, Inc., whereby the Company was given complete control over any leases that might be obtained from the offers in the simultaneous drawing. The agreement also provided that with the exception of one lease obtained by each applicant, in which the proceeds would be divided between the Company and the applicant, the Company would retain all of the proceeds from the sale thereof. This was amended to a certain extent by an addendum to the agreement, which provided that the applicant might take any leases obtained by the drawing subject to the same terms and conditions of the agreement. It has also been determined in the course of the investigation that, although the applicants had probably acted in good faith in filing their lease offers, Mr. King and the Transwestern Investment Company, Inc., had conspired to obtain a 50 per cent interest in each offer, and their chances of sharing on a 50 per cent basis in the profits that might be derived therefrom were actually mathematically enhanced to the extent of 59 to 1 over the chances of individuals who filed through regular channels. Accordingly, there seems to be no question but that the offerors in the cases here under discussion are not the real parties in interest by reason of the agreement signed by each, giving the Transwestern Investment Company, Inc., complete control over all of the leases obtained in connection therewith.

It has been held in a similar case that where the members of an association enter into an agreement whereby the as-

sociation is to solicit individuals to file through the association applications for oil and gas leases, and where, under powers of attorney from the applicants, the association is to exercise complete control over the leases and receive the benefits therefrom, the association is the real party in interest and not the applicants. *Antonio DiRocco, et al.*, A-26434 (July 11, 1952).

In another parallel case, where a group of employees of a certain firm were induced to file oil and gas lease offers in an area opened to simultaneous drawing at the behest of and for the benefit of the firm, and thereby greatly increasing the chances of the firm obtaining a lease to the land, the Department has ruled that such procedure would not be condoned, and any applications obtained by such methods would be rejected. *Clifton Carpenter*, A-22856 (January 29, 1941).

Accordingly, the protest submitted by Mr. Miller has merit and must be sustained in the instant cases, and the decision dismissing his protest is hereby reversed.

The pending lease offers in question, Fairbanks 021457, 021494, 021549, 021642 and 021765, must be and are hereby rejected.

It appears, then, that since the conflicting offerors, and their alternates in the drawing held for the lands in question, are disqualified because of the collusive manner in which they filed their lease offers, Duncan Miller is the first qualified applicant for the lands. Accordingly, if leases are to be issued for the lands in question, they must be issued to the first qualified applicant. Cf. *C. T. Hegwer et al.*, 62 I.D. 135 (1955). When this decision becomes final the case records will be remanded to the Manager, through the Bureau's office of the Operations Supervisor at Fairbanks, for the issuance of such leases to Mr. Miller, all else being regular.

Each of the appellants listed on the attached appendix are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43

CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each lease offer involved. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

Mr. Duncan Miller
Box 728
Boulder City, Nevada

DALE E. ZIMMERMAN
Legal Assistant
Division of Appeals

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Regular Mail)
Mr. E. B. Heckel (Certified Mail)
Mr. Jack M. Newman, Jr. (Certified Mail)
Mr. W. C. Wells (Certified Mail)
Mrs. Evelyn R. Robertson (Certified Mail)
Mr. John King (Regular Mail)
Transwestern Investment Company (Regular Mail)
Miss K. Miller (Certified Mail)
Hon. Gordon Allott, United States Senate
Hon. Ernest Gruening, United States Senate
Hon. Byron G. Rogers, House of Representatives
Hon. John G. Tower, United States Senate
Chief, Division of Minerals (4)
Geological Survey (3)
OS (Fairbanks)
LO (Fairbanks)
Case Files
Perm. File
Appeals Reading File
Attorneys' Reading File
RBO

APPENDIX

Name and Address of conflicting offeror	Fairbanks Serial No.
Miss K. Miller P. O. Box 1161 Dallas, Texas	021457
Mrs. Evelyn R. Robertson P. O. Box 1184 Dallas, Texas	021494
Mr. Jack M. Newman, Jr. 6155 Monticello Dallas, Texas	021549
Mr. W. C. Wells P. O. Box 1161 Dallas, Texas	021642
Mr. E. B. Heckel 5110 Boca Raton Dallas, Texas	021765

"EXHIBIT C"

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

In reply refer to:
6.05c
Fairbanks 022139
022140
022141
022142
022198
March 16, 1962
CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

DECISION

DUNCAN MILLER — Oil and Gas

Supplemental Decision

This decision supplements the Bureau decision, *Duncan Miller*, Fairbanks 022139 etc., of September 21, 1961, which reversed a decision of the Manager of the Fairbanks Land Office of May 29, 1959, dismissing a protest filed by Mr. Miller against the issuance of oil and gas leases in conflicting offers Fairbanks 021457, 021494, 021549, 021642, and 021765.

The decision of September 21, 1961, provides that each of the appellants listed in the appendix attached thereto, be served a copy of that decision by certified mail. This decision provides that the decision also be served on each of the alternate drawees mentioned therein, and as listed on the amended appendix attached hereto and made a part hereof.

This decision does not otherwise affect the determination made in the decision of September 21, 1961, and which is repeated as follows:

Mr. Duncan Miller has appealed from a decision dated May 29, 1959, which dismissed his protest against the issuance of oil and gas leases in connection with prior offers in conflict with the above-identified offers filed by him under the Mineral Leasing Act, as amended (30 U.S.C. 1958 ed., sec. 226).[1] The appellant in his protest, claims that the offerors in the conflicting lease offers are not qualified to hold leases, because all of them used the same address from which to make application for the land in question.

The records show that the appellant's lease offers were filed subsequent to a drawing held on October 1, 1958 for lands in the Gubik-Umiat area of Alaska. At this drawing the offers, against which the appellant filed his protest, were drawn with number one priority, with two alternates selected for each block of the applied for lands. The records further show the address of the successful drawees, including the alternates, to be Box 1161, Dallas, Texas at the time the offers were filed.[2]

The appellant contends, in substance, in his appeal, that due to the evidence collusion among the conflicting offerors, because all of their offers were mailed from Box 1161, Dallas, Texas, they are not qualified offerors. The appellant asserts that, in addition to the offers protested by him, there were more offers filed from the same address, the exact number being unknown since the land office would not divulge such information to him. He contends that it is the duty of the Bureau of Land Management to put a stop to such corrupt practices and exploitation. The ap-

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[1] The names, addresses, and serial numbers of the conflicting lease offers are shown on the attached appendix.

[2] The addresses of some of these persons have since been changed. See appendix.

pellant asserts that he is the first qualified applicant for the lands involved, and is entitled to leases therefor.

As a result of the protest filed by Mr. Miller, the Bureau conducted an intensive investigation of the filing of the large number of applications by applicants using the Box 1161, Dallas, Texas, address, in order to determine if there was, in fact, a commission of fraud or collusion in the filing of such applications.

Evidence obtained during the investigation establishes that the real parties in interest in the oil and gas lease offers in question, and in leases obtained by reason of such offers, are the Transwestern Investment Company, Inc., whose address was, at the time the offers were filed, P. O. Box 1161, Dallas, Texas, and Mr. John J. King, whose address is 1700 Broadway, Denver, Colorado. The record shows that Mr. King originated the idea of interesting a number of persons in filing oil and gas lease offers in the Gubik area of Alaska. Through a mutual friend, Mr. Melvin R. Maillaux, at the time Vice-President of the Transwestern Investment Company, Inc., some 59 persons were found who were willing to file 39 applications each, involving 2,560 acres in each application, as described in certain leasing blocks provided for in the order opening the Gubik area to oil and gas leasing. The record also shows that Mr. Maillaux and his wife, each filed 39 applications for land in the same area. Each of the offerors, signed their lease offer forms in blank, which were later filled out in the office of Mr. King in Denver, Colorado, as to the description of the lands and other details. Each offeror also signed blank assignments to the Transwestern Investment Company, Inc. It appears that each offeror also signed an agreement with the Transwestern Investment Company, Inc., whereby the Company was given complete control over any leases that might be obtained from the offers in the simultaneous drawing. The agreement also provided that with the exception of one lease obtained by each applicant, in which the proceeds would be divided between

the Company and the applicant, the Company would retain all of the proceeds from the sale thereof. This was amended to a certain extent by an addendum to the agreement, which provided that the applicant might take any leases obtained by the drawing subject to the same terms and conditions of the agreement. It has also been determined in the course of the investigation that, although the applicants had probably acted in good faith in filing their lease offers, Mr. King and the Transwestern Investment Company, Inc., had conspired to obtain a 50 per cent interest in each offer, and their chances of sharing on a 50 per cent basis in the profits that might be derived therefrom were actually mathematically enhanced to the extent of 59 to 1 over the chances of individuals who filed through regular channels. Accordingly, there seems to be no question but that the offerors in the cases hereunder discussion are not the real parties in interest by reason of the agreement signed by each, giving the Transwestern Investment Company, Inc., complete control over all of the leases obtained in connection therewith.

It has been held in a similar case that where the members of an association enter into an agreement whereby the association is to solicit individuals to file through the association applications for oil and gas leases, and where, under powers of attorney from the applicants, the association is to exercise complete control over the leases and receive the benefits therefrom, the association is the real party in interest and not the applicants. *Antonio DiRocco, et al.*, A-26434 (July 11, 1952).

In another parallel case, where a group of employees of a certain firm were induced to file oil and gas lease offers in an area opened to simultaneous drawing at the behest of and for the benefit of the firm, and thereby greatly increasing the chance of the firm obtaining a lease to the land, the Department has ruled that such procedure would not be condoned, and any applications obtained by such methods would be rejected. *Clifton Carpenter,* A-22856 (January 29, 1941).

Accordingly, the protest submitted by Mr. Miller has merit and must be substained in the instant cases, and the decision dismissing his protest is hereby reversed.

The pending lease offers in question, Fairbanks 021457, 021494, 021549, 021642, and 021765, must be and are hereby rejected.

It appears, then, that since the conflicting offerors, and their alternates in the drawing held for the lands in question, are disqualified because of the collusive manner in which they filed their lease offers, Duncan Miller is the first qualified applicant for the lands. Accordingly, if leases are to be issued for the lands in question, they must be issued to the first qualified applicant. Cf. *C. T. Hegwer et al.*, 62 I.D. 77 (1955). When this decision becomes final the case records will be remanded to the Manager, through the Bureau's office of the Operations Supervisor at Fairbanks, for the issuance of such leases to Mr. Miller, all else being regular.

Each of the appellants listed on the attached appendix are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be $5.00 for each lease offer involved. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken the adverse party to be served is:

Mr. Duncan Miller
Box 728
Boulder City, Nevada

DALE E. ZIMMERMAN
Chief, Branch of Mineral
Leasing Appeals
Division of Appeals

Enclosure

DISTRIBUTION:

Mr. Duncan Miller (Regular Mail)
Mr. E. B. Heckel (Certified Mail)
Mr. Jack M. Newman, Jr. (Certified Mail)
Mr. W. C. Wells (Certified Mail)
Mrs. Evelyn R. Robertson (Certified Mail)
Alternate drawees listed in Appendix (Certified Mail)
Mr. James M. Holmberg (Regular Mail)
Mr. John King (Regular Mail)
Transwestern Investment Company, Inc. (Regular Mail)
Miss K. Miller (Certified Mail)
Honorable Gordon Allott, United States Senate
Honorable Ernest Gruening, United States Senate
Honorable Byron G. Rogers, House of Representatives
Honorable John G. Tower, United States Senate
Chief, Division of Minerals (4)
Geological Survey (3)
SD (Alaska)
Acting DM (Fairbanks)
LO (Fairbanks)
Case Files
Permanent File
Appeals Reading File
Attorneys' Reading File
RBO

APPENDIX

Name and Address of conflicting offeror	Fairbanks Serial No.
Miss K. Miller P. O. Box 1161 Dallas, Texas	021457
Mrs. Evelyn R. Robertson P. O. Box 1184 Dallas, Texas	021494
Mr. Jack M. Newman, Jr. 6155 Monticello Dallas, Texas	021549
Mr. W. C. Wells P. O. Box 1161 Dallas, Texas	021642
Mr. E. B. Heckel 5110 Boca Raton Dallas, Texas	021765

Alternate Drawees

Mr. R. L. Madden P. O. Box 1161 Dallas, Texas	(No Land Office Serial Numbers were assigned to the Offers filed by the Alternate Drawees)
Mrs. Darlene R. Wallace P. O. Box 1161 Dallas, Texas	
Mr. Joseph T. Kent P. O. Box 1161 Dallas, Texas	
Mr. J. Ervin P. O. Box 1161 Dallas, Texas	

Mr. Melvin R. Maillaux
P. O. Box 1161
Dallas, Texas

Mr. Billy A. Dunnigan
P. O. Box 1161
Dallas, Texas

Mr. J. Halton Henderson
P. O. Box 1161
Dallas, Texas

Miss K. Miller
P. O. Box 1161
Dallas, Texas

Mr. Jack Franklin
P. O. Box 1161
Dallas, Texas

Mrs. Pearl Loden
P. O. Box 1161
Dallas, Texas

EXHIBIT D

EVELYN R. ROBERTSON ET AL.
DUNCAN MILLER

A-29251 Decided March 21, 1963

Applications and Entries: Filing—Oil and Gas Leases: Applications

When a drawing to determine priority among simultaneously filed conflicting oil and gas lease offers is conducted in manner contrary to the provisions of the pertinent regulation and the order directing the drawing, it must be vacated and a new drawing held.

Oil and Gas Leases: Applications—Agency

An oil and gas lease offer filed by one acting as an agent for the offeror without an accompanying statement of any possible interest of the agent in the offer or prospective lease as required by the pertinent regulation 43 CFR 192.42(e)(4) earns no priority and must be rejected.

Oil and Gas Leases: Applications

Where several offerors for an oil and gas lease for the same land enter into an agreeemnt with an agent who is to have at least 50 percent interest in any lease issued and who is to have subtsantial control over the lease, the agent is a real party in interest in each offer so that he, in a drawing held to determine priority among these and other conflicting offers, has more than one chance to prevail, a fact which disqualifies all offers so affected from gaining any priority from the drawing.

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

A-29251

EVELYN R. ROBERTSON *et al.*[1]
DUNCAN MILLER

Fairbanks 021494 *et al.*[1]
Fairbanks 022139 *et al.*

Noncompetitive offers to lease for oil and gas rejected; lease to be issued pursuant to another noncompetitive offer

Affirmed in part; reversed in part

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Evelyn R. Robertson and six others[1] have appealed to the Secretary of the Interior from a decision dated September 21, 1961, as supplemented on March 16, 1962, of the Division of Appeals, Bureau of Land Management, which rejected their respective non-competitive offers to lease oil and gas certain lands in Alaska and directed that leases be issued to Duncan Miller pursuant to his four conflicting offers.[2]

The lands sought for lease are in the Gubik-Umiat area in Alaska which, along with other lands totaling approximately 4,000,000 acres, were opened to oil and gas leasing by a notice dated July 24, 1958, published in the Federal Register on July 29, 1958 (23 F.R. 5700). The appellants

[1] The names of the other appellants and their offer numbers are:

Jack M. Newman, Jr.	Fairbanks 025149
W. C. Wells	Fairbanks 021642
E. B. Heckel	Fairbanks 021765
R. L. Madden	No serial number assigned
Melvin R. Mailloux	No serial number assigned
Jack Franklin	No serial number assigned

[2] Fairbanks 022139, 022141, 022142, 022198.

were among the many applicants who filed for one or more of the tracts into which the area had been divided for leasing purposes. A drawing was held on October 1, 1958, as provided by the opening notice and the pertinent regulation, 43 CFR 295.8, to determine the priority of the various conflicting offers. Mrs. Robertson, Newman, Wells, and Heckel were each drawn number one for one of the four leasing tracts involved here and Madden, Mailloux, and Franklin were drawn as number two or three for one or the other of these tracts.[3]

Thereafter, before any leases were issued, Miller, on October 22 and 28, 1958, filed his conflicting offers and then on November 7, 1958, filed a protest against the prior offers. He asserted later in support of the protest that the appellants were not qualified to hold leases because all of them gave the same address, Post Office Box 1161, Dallas, Texas, in their offers, which he said were indicative of collusion. In a decision dated May 29, 1959, the Fairbanks land office dismissed the protest, holding that, in the absence of any evidence in support of Miller's allegation, there was nothing in the record to show that each offeror was not acting for himself alone or was not qualified to file an offer or hold a lease.

On appeal to the Director, Miller repeated his allegation, added that many other offerors used the same address, said that it was impossible for him to present additional evidence, and asserted that it was the duty of the Bureau of Land Management to stop collusive filings.

Thereafter, the Bureau conducted an intensive investigation of the circumstances surrounding the filing of a large number of applications using Box 1161, Dallas, Texas, as an address. In its decision, the Bureau set out the results of the investigation. It concluded that the appellants were not the real parties in interest in their resepective

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[3] The supplemental decision was served upon the two alternates drawn for each tract. The other alternates have not filed appeals.

offers but that the Transwestern Investment Company, Inc., with whom they had all signed an agreement was, and that they were disqualified in the drawing because of the collusive manner in which they filed their offers. It concluded that leases should be issued to Miller, all else being regular.

On appeal, the appellants contend that they are the real parties in interest and that the use of the same address did not show collusion, and that the use of agents to handle lease filings is usual and permissible. They also deny some of the conclusions reached by the Bureau, which will be stated below. Finally, they urge that in any event it was erroneous to award the leases to Miller.

It appears that John J. King of Denver, Colorado, conceived the idea of interesting a large number of people in filing oli and gas lease offers in the Gubik area of Alaska. He then arranged with Mailloux, who was at the time Vice President of Transwestern Investment Company, Inc., for Mailloux to explain the project to people in the Dallas area who might be willing and able to participate in it. Mailloux persuaded 59 individuals to sign an agreement with Transwestern, which provided as follows:

> "THIS AGREEMENT, made this ..... day of September, 1958, by and between ....., hereinafter called 'Client,' and TRANSWESTERN INVESTMENT COMPANY, INC., a Delaware corporation, hereinafter called 'Agent;'
>
> "WHEREAS, Client desires to acquire a Federal Oil and Gas Lease in the State of Alaska and desires the services of Agent to handle for Client his filing of Client's offers for such lease, and to handle the sale of such lease if acquired; and
>
> "WHEREAS, Agent is willing to furnish such services upon the terms and conditions hereinafter set forth;

"Now, Therefore, in consideration of the mutual covenants hereinafter set forth, Agent and Client agree as follows:

"1. Client will provide Agent in sextuplet thirty-nine (39) signed forms No. 4-1158 'Offer to Lease and lease for Oil and Gas.'

"2. Client will deliver to Agent thirty-nine (39) signed checks on Client's bank account, each in the amount of Thirteen Hundred Dollars ($1300.00) and each drawn payable to the United States Bureau of Land Management.

"3. Client will pay Agent a service charge of Thirty-Nine Dollars ($39.00), being One Dollar ($1.00) per offer filed.

"4. Agent will complete the thirty-nine (39) offers and file the necessary number of copies of the same, together with the thirty-nine (39) checks to be delivered hereunder with the Fairbanks office of the Bureau of Land Management prior to September 29, 1958. Agent will provide the geological services required to select the lands to be covered by such filings in an area or areas considered geologically favorable for the exploration for oil and gas. In the event that Agent fails to perfect such filings, for any reason, Agent shall return the service charge paid by Client and all of the checks delivered by Client and Agent shall have no further liability by reason of such failure to perfect the filings.

"5. As soon as the results of the acceptance or rejection by the United States Bureau of Land Management of Client's offers are made known, Agent will deposit to Client's bank account such funds as may be required to cover all except one of Client's Thirteen Hundred Dollar ($1300.00) checks, which will be presented for payment as a result of the acceptance of

one or more of Client's offers by the Bureau of Land Management.

"6. Client agrees promptly to execute and deliver to Agent duly executed Assignments of all leases acquired by Client as a result of offers made in accordance with this Agreement, such Assignments to be made on the required number of copies of forms No. 4-1175, 'Assignment Affecting Record Title to Oil and Gas Lease.' The name of the Assignee shall be left blank in such Assignment, and the overriding royalty reservation shall also be left blank. Client hereby authorizes Agent to complete such Assignment by filling in the name of the Assignee and the percentage of the overriding royalty, if any, to be reserved. Client hereby authorizes Agent to deliver such Assignment for such consideration as Agent may deem advisable.

"7. Agent shall use its best effort to sell upon the best available terms all leases obtained pursuant to offers made by Client under this Agreement. Upon a sale by Agent of the leases, if any, acquired by Client, Agent will promptly pay Client the sum of Thirteen Hundred Thirty-Nine Dollars ($1339.00), being Client's total investment, plus one-half (½) of the cash profit, if any, realized from the sale of that one of Client's leases which is sold at the highest price. The proceeds realized from the sale of Client's leases, if any, in excess of one, will be retained by Agent in consideration of the performance by Agent of its obligations under Paragraph 5 above.

"8. Upon the successful sale by Agent of that one of Client's leases which is sold at the highest price, Client will promptly execute and deliver to Agent good and sufficient Assignment of one-half (½) of the overriding royalty, if any, reserved to Client in his Assignment of such lease, and a good and sufficient Assignment of all overriding royalties, if any, reserved to

Client in his assignment of all other leases acquired hereunder. No consideration shall be paid for such Assignments other than that paid to Client by Agent under the terms of Paragraph 5 above.

"9. If, within ten days after it is known which, if any, of Client's offers have been accepted, Client is dissatisfied with the transaction entered into pursuant to this Agreement, Agent will reimburse Client for all of his payments made hereunder in exchange for an Assignment of all rights of Client in oil and gas leases obtained by Client under this Agreement.

"10. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns.

"IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

"CLIENT

"TRANSWESTERN INVESTMENT COMPANY, INC.

"By .....
Vice President

"AGENT

"11. Nothing in this agreement shall preclude client from paying for ($1,300.00 to U. S. Bureau of Land Mgt.) any leases more than one the client draws and keeping the same subject to the same terms and conditions as those described herein for the intial lease drawn."[4]

In accordance with the agreement, each of the 59 offerors signed 39 offers covering 2,560 acres each in the Gubik area, and furnished 39 checks each in the amount of $1,300. The documents were then sent to King signed in

[4] Paragraph 11 was not part of the printed agreement but added as a rider. It was added to most of the agreements after they were first signed.

blank.[5] King filled in the descriptions of the land and prepared the envelopes for the drawing. He then took the complete offers to Fairbanks where he filed them and others, some 2,750 offers in all, on September 29, 1958. As a result, some 59 offers of the Transwestern group were filed for each of 39 tracts.

Although there was no written agreement between Transwestern and King, it appears that King was to receive half of any profits derived by Transwestern from the transaction.

The notice of availability published on July 29, 1958, *supra,* stated: "Each offeror may file only one offer for each separate leasing block." (Paragraph 3.)

The Bureau held, in effect, that King and Transwestern, having a 50 percent interest in each of the offers filed by the 59 offerors they represented, had mathematically enhanced their chances of prevailing in the drawing to the extent of 59 to 1 over the chances of other offerors.

Aside from the reasons relied upon by the Bureau, however, there is another regulation pertinent to the facts which is dispositive of the appeal. At the time the appellants filed their offers this regulation provided that each offer must be accompanied by:

> "If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been

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5 The appellants deny that the applications were signed in blank. However, King in a sworn statement in response to the question "Did you receive the applications all signed in blank?" replied:

> "Yes, we did the clerical processing in this office. The stacks of applications came up here signed and witnessed and we filled in the descriptions of the land. And we put them in the envelopes too. We had a way of doing it, so that we could write the envelope—the description of the land had to be on the outside of the envelope for the drawing. So we had a system of putting it in while we typed the application so that the description would appear on the outside of the envelope and then we checked them all for, you know, correctness and so forth and put their checks each in the individual envelope and labeled it, and sealed it."

authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor exceeds 46,080 chargeable acres in the same State, or exceeds 100,000 acres in the Territory of Alaska. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation." 43 CFR 192.42(e)(4).

The notice of availability, *supra*, specifically provided that "All offers to lease must be submitted * * * in accordance with the regulations 43 CFR 192.42. * * *" (Paragraph 3.)

The agreement establishes that Transwestern was an agent of the offerors who was authorized to act on behalf of the offeror with respect to the offer or lease. For example, paragraph 3 authorizes Transwestern to complete and file the offers and paragraph 7 empowers it to sell the

leases. It follows that the prescribed statement was required to be filed with each of the offers, together with a copy of the agreement between the offeror and Transwestern. In the absence of the statement, the offers earned no priority. *Charles B. Gonsales et al., Western Oil Fields, Inc., et al.*, 69 I.D. ..... (A-28699, A-28887, December 28, 1962); *Eugenia Bate*, 69 I.D. ..... (A-28519, December 28, 1962); *W. H. Burnett et al.*, 64 I.D. 230 (1957); *Roy M. Johnson*, A-28173 (February 29, 1960).

Although it is now unnecessary to consider the other reasons relied upon by the Bureau, I believe it is well to state that under the facts established Transwestern and King were the real parties in interest in the offers,[6] that a party in interest can submit only one offer for participation in a drawing,[7] and that Transwestern and King had created an inherently unfair situation which disqualified them from participating in the drawing.[8] For these reasons, too, the offers in question did not earn priority.[9]

There remains the objections raised by the appellants to the issuance of leases to Miller. The notice of availability, *supra*, stated:

> "6. All offers must be filed in the Land Office, Bureau of Land Management (P. O. Box 1050), Fairbanks, Alaska. All offers received in the above-noted Land Office from the date of publication hereof and until 10 a.m. of the 60th day thereafter, will be considered as having been simultaneously filed. The priorities of all conflicting offers will be determined in ac-

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[6] *Antonio Di Rocco et al.*, A-26434 (July 11, 1952); *Yakutat Development Company, Alaska*, 63 I.D. 97 (1957).

[7] *McKay* v. *Wahlennaier*, 226 F. 2d 35 (D.C. Cir. 1955); *Hill et al.* v. *Culbertson*, A-26150 *et al.* (August 13, 1951); reversed on other grounds, *McKay* v. *Wahlennaier, supra.*

[8] *Id.*

[9] *Id.*

cordance with the procedure outlined in the regulation 43 CFR 295.8 and the sealed envelopes referred to in the preceding paragraph will be returned unopened to the unsuccessful offerors."

At the drawing, the manager explained that from each group of filings for the same land a winner and two alternates would be selected and that all additional sealed envelopes would be returned to the offerors. In response to a protest by King, who argued that this procedure would deny priority to any offerors whose offers were returned if all of the first three drawn failed to qualify, the manager stated that in this event the next valid offer filed over the counter would be adjudicated. The drawing was then held and the procedure announced by the manager followed. Apparently no record was kept of the offers other than the first three drawn for each leasing block.

At the date of the drawing the pertinent regulation referred to in the notice, *supra,* provided:

> "*Processing of simultaneous applications.* All applications, which term includes offers to lease, filed pursuant to the regulations in any part of this chapter will be regarded as having been filed simultaneously within the meaning of this section where by reason of an order of restoration or opening, or a notice of the filing of a plat of survey or resurvey, they are filed in the manner and within the period of time for the filing of simultaneous applications provided for in such order or notice. When no order of restoration or notice of opening is involved, the applications will be treated as having been filed simultaneously if they are received by a land office (or, if there is no such office for the State, by the Washington Office of the Bureau of Land Management), over the counter at the same time, or are received in the same mail. Unless otherwise provided in a particular order, or regulation,

applications which are filed simultaneously will be processed in accordance with the following rules:

"(a) All such applications received will be examined and appropriate action will be taken on those which do not conflict in whole or in part.

"(b) All such applications which conflict in whole or in part will be included in a drawing which, except as provided in paragraph (c) of this section will fix the order in which the applications will be processed.

"(c) All applications included in the drawing will be subject to any priority to which any particular applicant may be entitled on account of a preference right conferred by law or regulations." 43 CFR 295.8.

The purpose of the regulation is to establish a procedure to determine the order in which offers simultaneously filed will be considered so that it may be ascertained which offer is entitled to the preference right granted by section 17 of the Mineral Leasing Act, as amended, to the person first filing an application for a noncompetitive lease who is qualified to hold a lease. *Henry S. Morgan, Edwin W. Stockmeyer,* 66 I.D. 278 (1959); *Henry S. Morgan,* A-28688 (August 30, 1961).

Although the regulations authorizes a deviation from the required procedure if a particular order so provides, the notice in question did not allow for any deviation. It specifically stated:

"*The priorities of all conflicting offers* will be determined in accordance with the procedure outlined in the regulation 43 CFR 295.8 and the sealed envelopes referred to in the preceding paragraph will be returned unopened to the unsuccessful offerors." (Notice, *supra,* paragraph 6; emphasis added.)

The manager apparently interpreted the direction to return the unsuccessful offers unopened to justify establishing the priority of only the first three offers drawn. In so doing, he ignored the preceding requirement that he establish the priority of all conflicting offers. Now that the first three offers have been disqualified, it is apparent that the procedure followed has negated the purpose for which the drawing was held and has deprived all the other offerors of an opportunity to qualify for a lease.

Accordingly, as the drawing was conducted in violation of the regulation and the order, it must be vacated and a new drawing ordered. See *John H. Anderson et al.*, 67 I.D. 209 (1960); *Henry S. Morgan, Edwin W. Stockmeyer, supra; John Halagan,* A-29027 (October 4, 1962).

In view of this conclusion, the Bureau's direction that Miller's offers are to be adjudicated as the first qualified applicant cannot be adopted and must be reversed. Miller, if he chooses, can participate in the new drawing.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 210.2.2A(4), (a), Departmental Manual; 24 F.R. 1348), the decision of the Bureau of Land Management is affirmed in part and reversed in part and the case is remanded for further proceedings consistent herewith.

FRANK J. BARRY
Solicitor

Answer

The defendant, Stewart L. Udall, Secretary of the Interior, by his attorney, Thos. L. McKevitt, Attorney, Department of Justice, for his answer states:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

Count I

I

Defendant admits the allegations in the first sentence of paragraph 1 and the allegation that the real property involved is located within the State of Alaska. Defendant is without information sufficient to form a belief whether the value of the property exceeds $10,000. The remaining allegations of paragraph 1 and the allegations in paragraphs 2 and 3 are conclusions of law which require no answer.

II

Defendant admits the allegations in paragraph 4 and denies the allegation in paragraph 5 that certain events are "the only matters of administrative record to which this Plaintiff has been afforded access." Defendant admits the allegations in subparagraphs 5.1, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9 and 5.11. With respect to the allegations in subparagraph 5.2, defendant admits that plaintiff filed a lease offer covering Block 2 and paid the requisite filing fee and first year's advance rental. Defendant denies the remaining allegations in subparagraph 5.2. Defendant admits the allegations in subparagraph 5.3 as they relate to a drawing held on October 1, 1958. Defendant admits that each of the plaintiffs appealed as alleged in the first sen-

tence of subparagraph 5.10 and that their contentions on appeal were as outlined in the second sentence of that subparagraph. Defendant denies that these allegations have any validity.

III

Defendant denies the allegations in paragraph 6.

Count II

Defendant admits that the plaintiff, Jack Franklin, filed the application described in paragraph 3 of this count and paid the filing fee and first year's advance rental but denies the remaining allegation in that paragraph. Defendant admits the allegations in paragraphs 1, 5, 7 and 9. With respect to the remaining allegations, which plaintiff pleads by restatement, defendant adopts his corresponding responses under Count I of this answer.

Count III

Defendant admits that the plaintiff, Robert L. Madden, filed the application described in paragraph 3 of this count and paid the filing fee and first year's rental but denies the remaining allegations in that paragraph. Defendant admits the allegations in paragraphs 1, 5, 7 and 9. With respect to the remaining allegations, which plaintiff pleads by restatement, defendant adopts his corresponding responses under Count I of this answer.

Count IV

Defendant admits that the plaintiff, Melvin R. Mailloux, filed the application described in paragraph 3 of this count and paid the filing fee and first year's rental but denies the remaining allegations in that paragraph. Defendant admits the allegations in paragraphs 1, 5, 7 and 9. With respect to the remaining allegations, which plaintiff pleads by restatement, defendant adopts his corresponding responses under Count I of this answer.

THIRD DEFENSE

Duncan Miller, an applicant for oil and gas leases covering the same lands, is an indispensable party. There is pending in this Court a proceeding entitled *Duncan Miller* v. *Stewart L. Udall, Secretary of the Interior,* Civil No. 1066-63, wherein Duncan Miller seeks a mandatory order directing that the defendant issue oil and gas leases to him covering the same property involved in this particular proceeding.

WHEREFORE, defendant demands that the complaint be dismissed and that he be awarded his costs.

THOS. L. MCKEVITT
Attorney,
Department of Justice
Room 2127
Department of Justice
Building
Washington 25, D. C.
Attorney for Defendant

Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended

1. By notice dated July 24, 1958, published in the Federal Register on July 29, 1958, 23 Fed. Reg. 5700, defendant opened to oil and gas leasing approximately 4,000,000 acres of public lands in the Gubik-Umiat area in Alaska. The notice, which appears as Exhibit "A" to the complaint, provided that the lands would be offered in leasing blocks of approximately 2,500 acres each, that offer would be received for a sixty-day period, that "each offeror may file only one offer for each separate leasing block," that priorities of all conflicting offers would be determined by a drawing as outlined in 43 C.F.R. 295.8 and that all leasing would be subject to the regulations to be found in 43 C.F.R. Part 192 and to the particular provisions of the notice.

2. At the time this notice was issued and at all times pertinent hereto a regulation of the Department of the Interior, 43 C.F.R. 192.42(e)(4), provided as follows:

> If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor exceeds 46,080 chargeable acres in the same State, or exceeds 100,000 acres in the Territory of Alaska. * * *.

3. *Prior* to the drawing provided for in the notice, each of the plaintiffs signed an agreement with the Transwestern Investment Company, Inc., in the following form:

> THIS AGREEMENT, made this ..... day of September, 1958, by and between ....., hereinafter called 'Client,' and TRANSWESTERN INVESTMENT COMPANY, INC., a Delaware corporation, hereinafter called 'Agent;'
>
> WHEREAS, Client desires to acquire a Federal Oil and Gas Lease in the State of Alaska and desires the

services of Agent to handle for Client his filing of Client's offers for such lease, and to handle the sale of such lease if acquired; and

WHEREAS, Agent is willing to furnish such services upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Agent and Client agree as follows:

1. Client will provide Agent in sextuplet thirty-nine (39) signed forms No. 4-1158 'Offer to Lease and Lease for Oil and Gas.'

2. Client will deliver to Agent thirty-nine (39) signed checks on Client's bank account, each in the amount of Thirteen Hundred Dollars ($1300.00) and each drawn payable to the United States Bureau of Land Management.

3. Client will pay Agent a service charge of Thirty-Nine Dollars $(39.00), being One Dollar ($1.00) per offer filed.

4. Agent will complete the thirty-nine (39) offers and file the necessary number of copies of the same, together with the thirty-nine (39) checks to be delivered hereunder with the Fairbanks office of the Bureau of Land Management prior to September 29, 1958. Agent will provide the geological services required to select the lands to be covered by such filings in an area or areas considered geologically favorable for the exploration for oil and gas. In the event that Agent fails to perfect such filings, for any reason, Agent shall return the service charge paid by Client and all of the checks delivered by Client and Agent shall have no further liability by reason of such failure to perfect the filings.

5. As soon as the results of the acceptance or rejection by the United States Bureau of Land Manage-

ment of Client's offers are made known, Agent will deposit to Client's bank account such funds as may be required to cover all except one of Client's Thirteen Hundred Dollar ($1300.00) checks, which will be presented for payment as a result of the acceptance of one or more of Client's offers by the Bureau of Land Management.

6. Client agrees promptly to execute and deliver to Agent duly executed Assignments of all leases acquired by Client as a result of offers made in accordance with this Agreement, such Assignments to be made on the required number of copies of forms No. 4-1175, 'Assignment Affecting Record Title to Oil and Gas Lease.' The name of the Assignee shall be left blank in such Assignment, and the overriding royalty reservation shall also be left blank. Client hereby authorizes Agent to complete such Assignment by filling in the name of the Assignee and the percentage of the overriding royalty, if any, to be reserved. Client hereby authorizes Agent to deliver such Assignment for such consideration as Agent may deem advisable.

7. Agent shall use its best effort to sell upon the best available terms all leases obtained pursuant to offers made by Client under this Agreement. Upon a sale by Agent of the leases, if any, acquired by Client, Agent will promptly pay Client the sum of Thirteen Hundred Thirty-Nine Dollars ($1339.00), being Client's total investment, plus one-half (½) of the cash profit, if any, realized from the sale of that one of Client's leases which is sold at the highest price. The proceeds realized from the sale of Client's leases, if any, in excess of one, will be retained by Agent in consideration of the performance by Agent of its obligations under Paragraph 5 above.

8. Upon the successful sale by Agent of that one of Client's leases which is sold at the highest price, Client

will promptly executed and deliver to Agent good and sufficient Assignment of one-half (½) of the overriding royalty, if any, reserved to Client in his Assignment of such lease, and a good and sufficient Assignment of all overriding royalties, if any, reserved to Client in his assignment of all other leases acquired hereunder. No consideration shall be paid for such Assignments other than that paid to Client by Agent under the terms of Paragraph 5 above.

9. If, within ten days after it is known which, if any, of Client's offers have been accepted, Client is dissatisfied with the transaction entered into pursuant to this Agreement, Agent will reimburse Client for all of his payments made hereunder in exchange for an Assignment of all rights of Client in oil and gas leases obtained by Client under this Agreement.

10. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns.

In Witness Whereof, the parties have signed this Agreement on the date first above written.

.....

Client

Transwestern Investment Company, Inc.

By .....
Vice President

Agent

11. Nothing in this agreement shall preclude client from paying for ($1,300.00 to U. S. Bureau of Land Mgt.) any leases more than one the client draws and keeping the same subject to the same terms and conditions as those described herein for the initial lease drawn.

4. In addition to the four plaintiffs herein, a similar agreement was entered into with Tranwestern Investment Company, Inc., by 55 other individuals. In accordance with the agreement, each of the 59 offerors signed 39 offers covering 2,560 acres each in the Gubik area and furnished 39 checks each in the amount of $1,300.00. The documents were then sent to a man named King who had an interest in any of the profits to be derived by Transwestern from the transaction. King filled in the descriptions of the land and prepared the envelopes for the drawing. He then took the completed offers to Fairbanks where he filed them and others, some 2,750 offers in all, on September 29, 1958. As a result, some 59 offers of the Transwestern group were filed for each of 39 tracts.

5. A drawing was held on October 1, 1958, as provided by the opening notice and the pertinent regulation, 43 C.F.R. 295.8, to determine the priority of the various conflicting offers. Mrs. Robertson, Newman, Wells and Heckel were each drawn number one for one of the four leasing tracts involved here and Madden, Mailloux and Franklin were drawn number two or three for one or the other of these tracts.

6. Before any leases were issued, a third party, Duncan Miller, on October 22 and 28, 1958, filed his conflicting offers and, on November 7, 1958, filed a protest against the prior offers. He asserted later in support of the protest that the plaintiffs were not qualified to hold leases because all of them gave the same address, Post Office Box 1161, Dallas, Texas, in their offers, which he said was indicative of collusion. In a decision dated May 29, 1959, the Fairbanks Land Office dismissed the protest, holding that, in the absence of any evidence in support of Miller's allegation, there was nothing in the record to show that each offeror was not acting for himself alone or was not qualified to file an offer or hold a lease.

7. Miller appealed to the Director, Bureau of Land Management. In connection with that apepal, the Bureau conducted an investigation of the circumstances surrounding the filing of a large number of application using Box 1161, Dallas, Texas, as an address. In the course of that investigation, it developed the facts outlined in paragraphs 3 and 4 hereof. The Director, acting through the Legal Assistant, Division of Appeals, in a decision dated September 21, 1961 (Ex. "B" to Complaint), as supplemented by a decision dated March 16, 1962 (Ex. "C" to Complaint), concluded that the plaintiffs were not the real parties in interest as to their respective offers and that plaintiffs were disqualified in the drawing because of the collusive manner in which they filed their offers. The Director concluded that leases should be issued to Miller, all else being regular.

8. On appeal, the Secretary of the Interior affirmed in a decision dated March 21, 1963 (Ex. "D" to Complaint), basing his decision not only on the grounds stated in the decisions of the Director but on the additional ground that plaintiffs had failed to comply with the previously cited regulation, 43 C.F.R. 192.42(e)(4). The Secretary reversed as to the direction that leases should be awarded to Miller.

Respectfully submitted,

THOS. L. MCKEVITT
Thos. L. McKevitt
Attorney,
Department of Justice
Room 2127
Department of Justice
Building
Washington, D. C. 20530

Defendant's Motion for Summary Judgment

Defendant Stewart L. Udall, by his attorney, Thos. L. McKevitt, Attorney, Department of Justice, moves the Court for summary judgment on the ground that there is no genuine issue of fact and defendant is entitled to judgment as a matter of law.

This motion is based on the pleadings filed herein, with particular reference to the decision of the Secretary of the Interior dated March 21, 1963, which appears as Exhibit "D" to the complaint.

THOS. L. MCKEVITT
Thos. L. McKevitt
Attorney,
Department of Justice
Room 2127
Department of Justice
Building
Washington, D. C. 20530
Attorney for Defendant

APPENDIX A

Index of Exhibits

Unsworn Statement of Evelyn R. Robertson, given June 5, 1961 ..... Exhibit A-1

Affidavit of Evelyn R. Robertson, dated October 20, 1961 ..... Exhibit A-2

Affidavit of Evelyn R. Robertson, dated December 10, 1963 ..... Exhibit A-3

Affidavit of Jack Franklin dated November 2, 1961 ..... Exhibit B-1

Affidavit of Jack Franklin, dated December 10, 1963 ..... Exhibit B-2

Affidavit of Robert L. Madden, dated October 17, 1961 ..... Exhibit C-1

Affidavit of Robert L. Madden, dated December 10, 1963 ..... Exhibit C-2

Unsworn statement of Melvin R. Mailloux, given October 10, 1960 ..... Exhibit D-1

Affidavit of Melvin R. Mailloux, dated January 16, 1962 ..... Exhibit D-2

Affidavit of Melvin R. Mailloux, dated December 12, 1963 ..... Exhibit D-3

Unsworn Statement of John J. King, given June 2, 1961 ..... Exhibit E-1

Affidavit of John J. King, dated December 14, 1963 ..... Exhibit E-2

Affidavit of James S. Holmberg, dated December 14, 1963 ..... Exhibit F-1

Exhibit A-1

STATEMENT OF EVELYN R. ROBERTSON

Taken by Frank V. Kennedy in Room 620, Fidelity Union Life Building, Dallas, Texas, on June 5, 1961.

Mr. Kennedy: Q. 1. Will you please state your full name and address.

Mrs. Robertson: Evelyn R. Robertson, P.O. Box 1184, Dallas, Texas.

Mr. Kennedy: Q. 2. What is your occupation?

Mrs. Robertson: Oil producer.

Mr. Kennedy: Q. 3. On September 29, 1958, John J. King of Denver, Colorado filed 39 oil and gas lease offers on your behalf in the Fairbanks, Alaska Land Office, is that correct?

Mrs. Robertson: I believe it was 39.

Mr. Kennedy: Q. 4. Was this your first venture in oil and gas leasing on Federal Lands?

Mrs. Robertson: No, I have been in the oil producing business since 1948.

Mr. Kennedy: Q. 5. How did you first become interested in oil and gas leasing in Alaska?

Mrs. Robertson: I first became interested due to the Navy's activities up there.

Mr. Kennedy: Q. 6. Who first approached you in regard to filing the Gubik offers?

Mrs. Robertson: I was not approached by anyone. I often had coffee with Mailloux and Foley and other mutual friends, the matter just came up in the course of our regular conversation.

Mr. Kennedy: Q. 7. Did you sign an agreement of any kind?

Mrs. Robertson: I think I did. I am sure I must have.

Mr. Kennedy: Q. 8. Do you have a copy of the agreement?

Mrs. Robertson: I may have in my files—I am not sure.

Mr. Kennedy: Q. 9. Do you think this is the Agreement you signed (showing copy of agreement between Transwestern Investment Company and H. David Lassiter).

Mrs. Robertson: I think so—I am not sure.

Mr. Kennedy: Q. 10. Was the addendum attached to the agreement when you signed it?

Mrs. Robertson: I don't remember any addendum.

Mr.Kennedy: Q. 11. What part did you play in filling out the applications?

Mrs. Robertson: I am sure they were filled out before I signed them.

Mr. Kennedy: Q. 12. Did you sign the applications in blank before the land description was filled in?

Mrs. Robertson: I believe they were filled in before I signed the application.

Mr. Kennedy: Q. 13. Why did you file on 39 tracts?

Mrs. Robertson: According to reports this was the best area to file.

Mr. Kennedy: Q. 14. Did you furnish a check for $1300.00 payable to the Bureau of Land Management for each of the 39 applications signed by you or a total of 39 checks for $1300.00 each.

Mrs. Robertson: Yes.

Mr. Kennedy: Q. 15. Did you give anyone an option on any of the application on leases?

Mrs. Robertson: No.

Mr. Kennedy: Q. 16. How many leases did you draw?

Mrs. Robertson: One.

Mr. Kennedy: Q. 17. And that is Fairbanks 021494, which is involved in the Duncan Miller Protest, is that correct?

Mrs. Robertson: Yes.

Mr. Kennedy: Q. 18. Was there any understanding whatsoever other than the written agreement?

Mrs. Robertson: Just a verbal understanding among friends—that we would discuss any sale of a lease and I had the right to reject or accept any offer.

Mr. Kennedy: Q. 19. Who had exclusive control over your lease.

Mrs. Robertson: I did.

Mr. Kennedy: Q. 20. What part were you to play in any negotiations for the sale of any lease drawn by you?

Mrs. Robertson: I had the right to approve or disapprove any deal—including the right to accept or reject any offer concerning overriding royalty interest.

* * * * * * * * * *

Mr. Kennedy: Q. 22. Did you feel that you had control over any leases you might draw? If so, what control did you exercise?

Mrs. Robertson: I felt and still feel that I have complete control over my lease. [Robertson Statement Ex. A-1, p. 2]

Mr. Kennedy: Q. 23. Is there anything whatever that you care to add to this statement?

This statement is given by me on a voluntary basis. There has been no compulsion or influence of any kind. I have read the above statement and it is a true and correct statement to the best of my knowledge.

(Signed): Evelyn R. Robertson

Exhibit A-2

Affidavit

State of Texas)
County of Dallas) ss.

Evelyn R. Robertson, being first duly sworn on oath, deposes and says as follows:

1. During September, 1958, she executed a number of Forms 4-1158, Offer to Lease and Lease for Oil and Gas, had her signatures witnessed, and delivered the same, together with a number of her personal checks, each in amount of $1,300.00, and each payable to the U. S. Bureau of Land Management, to a representative of Transwestern

Investment Company, Inc., subject to the following understandings and agreements:

a. Transwestern Investment Company, Inc., was delegated to cause said Forms to be completed so as to constitute valid offers on no more than 39 predetermined tracts of land, the descriptions and locations of which were mutually agreed upon at that time. Additionally, Transwestern Investment Company, Inc., undertook to insure that not more than one of said offers was to be filed on any one tract of land, and to further insure that said offers would be timely filed with the Fairbanks Office of the U. S. Bureau of Land Management for participation in a simultaneous drawing in accordance with duly promulgated special regulations.

b. The funds represented by the said checks were exclusively the affiant's own, and any leases issued pursuant to any successful offers, even should she be successful on more than one offer, were to be exclusively her own.

c. Transwestern Investment Company, Inc., as her agent, was entitled to earn a share in any profits derived from a sale of any of said leases in the event said sale was arranged by Transwestern Investment Company, Inc.

d. The agency agreement between affiant and Transwestern Investment Company, Inc., was terminable at will by either party, and affiant was free to sell any of said leases at any time to any purchaser that she might develop for her own account without obligation to share any profits with Transwestern Investment Company, Inc., or anyone else.

2. During October, 1958, one of affiant's offers so filed, covering Block 2, Township 3 South, Range 3 East, UPM, Alaska, was awarded first priority at the simultaneous

drawing, and was assigned serial number Fairbanks 021494. Her check accompanying said offer was presented to her bank for payment and was duly paid out of her own funds.

3. Affiant had no interest, direct or indirect, in any other offer filed simultaneously on Block 2, Township 3 South, Range 3 East, UPM, Alaska.

4. Affiant was, at the time of said filing, and is now a native born citizen of the United States. Her interests, direct and indirect, in oil and gas leases and applications or offers therefor did not at that time nor do they now exceed 100,000 chargeable acres in Alaska, and she was at that time and is now over 21 years of age.

5. Approximately in April, 1959, subsequent to the payment of her check accompanying said offer, tired of awaiting the issuance of a lease pursuant thereto, affiant agreed verbally with Transwestern Investment Company, Inc., to sell her rights in said offer in exchange for the return to her of her investment therein.

6. Approximately in April, 1960, as a consequence of said verbal agreement, and subsequent thereto, upon the request of Transwestern Investment Company, Inc., affiant executed and delivered an Assignment of said offer to Dakamont Exploration Corporation. At no time prior to the execution and delivery of this Assignment did she execute or deliver to Transwestern Investment Company, Inc., nor was she requested by Transwestern Investment Company, Inc., to execute or deliver, any blank Assignment of said offer.

7. Prior to the date of filing of said offer, her agreements and understandings with Transwestern Investment Company, Inc. were as above related despite anything to the contrary contained in any tentative agreement she may have signed with Transwestern Investment Company, Inc.

8. During the period from immediately prior to the filing of said offer to her verbal agreement mentioned in

paragraph 5. above, said offer was owned by affiant exclusively, was subject to her exclusive control, and was not subject to any control by Transwestern Investment Company, Inc., or any other individual or company.

Further affiant saith not.

EVELYN R. ROBERTSON
Evelyn R. Robertson

Subscribed and sworn to before me this 20th day of October, 1961.

.....
Notary Public

My commission expires June 1, 1963.

Exhibit A-3

AFFIDAVIT OF EVELYN R. ROBERTSON

Everyn R. Robertson, being duly sworn, deposes and says:

1. That she is a plaintiff in the captioned action and that she has read the Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended, which has been filed in the subject action, and that she has also read the Memorandum of Points and Authorities filed therewith.

2. In Paragraphs 3 and 7 of said Statement and on Page 3 of the Memorandum defendant states that "prior to the drawing provided for in the Notice, each of the plaintiffs signed an agreement with the Transwestern Investment Company, Inc.". This affiant was interviewed by a representative of the Bureau of Land Management on or about June 5, 1961, and stated at that time that she was not sure as to the details surrounding the signing of any

agreement with Transwestern Investment Company, Inc., and affiant has at no time stated and does not know whether such agreement, if signed, was in fact signed prior to the lease drawing of October 1 and 2, 1958.

3. Affiant states positively that such lease offers as she filed covered tracts of land which she herself selected prior to the drawing, and her agent's only function in connection with the filing of the lease offers was to perform the clerical and administrative tasks necessary to insure that such offers were in proper form and were properly filed in accordance with regulations. Affiant paid for her offer with her own funds, and retained full control over the eventual disposition of the lease which she won in the drawing. Her offer was filed in accordance with law and regulation, and in collusion with no one.

4. Affiant was at all times the real party in interest in her lease offer and in full control thereof until approximately April, 1959, when she agreed to assign her interest.

EVELYN R. ROBERTSON
Evelyn R. Robertson

STATE OF TEXAS }
COUNTY OF GALVESTON } ss.

Subscribed and sworn to before me this 10th day of December, 1963.

REBA H. SPARKES
Reba H. Sparkes
Notary Public

My commission expires: June 1, 1965

Exhibit B-1

AFFIDAVIT

STATE OF TEXAS)
COUNTY OF DALLAS) ss.

Jack Franklin, being first duly sworn on oath, deposes and says as follows:

1. During September, 1958, he executed a number of Forms 4-1158, OFFER TO LEASE AND LEASE FOR OIL AND GAS, had his signatures witnessed, and delivered the same, together with a number of his personal checks, each in amount of $1,300.00, and each payable to the U. S. Bureau of Land Management, to a representative of Transwestern Investment Company, Inc., subject to the following understandings and agreements:

a. Transwestern Investment Company, Inc., was delegated to cause said Forms to be completed so as to constitute valid offers on no more than 39 predetermined tracts of land, the descriptions and locations of which were mutually agreed upon at that time. Additionally, Transwestern Investment Company, Inc., undertook to insure that not more than one of said offers was to be filed on any one tract of land, and to further insure that said offers would be timely filed with the Fairbanks Office of the U. S. Bureau of Land Management for participation in a simultaneous drawing in accordance with duly promulgated special regulations.

b. The funds represented by the said checks were exclusively the affiant's own, and any leases issued pursuant to any successful offers, even should he be successful on more than one offer, were to be exclusively his own.

c. Transwestern Investment Company, Inc., as his agent, was entitled to earn a share in any profits derived from a sale of any of said leases in the event said sale was arranged by Transwestern Investment Company, Inc.

d. The agency agreement between affiant and Transwestern Investment Company, Inc., was terminable at will by either party, and affiant was free to sell any of said leases at any time to any purchaser that he might develop for his own account without obligation to share any profits with Transwestern Investment Company, Inc., or anyone else.

2. During October, 1958, one of affiant's offers so filed, covering Block 6, Township 1 South, Range 3 East, UPM, Alaska, was awarded second priority at the simultaneous drawing.

3. Affiant had no interest, direct or indirect, in any other offer filed simultaneously on Block 6, Township 1 South, Range 3 East, UPM, Alaska.

4. Affiant was, at the time of said filing, and is now a native born citizen of the United States. His interests, direct and indirect, in oil and gas leases and applications or offers therefor did not at that time nor do they now exceed 100,000 chargeable acres in Alaska, and he was at that time and is now over 21 years of age.

5. Prior to the date of filing of said offer, his agreements and understandings with Transwestern Investment Company, Inc., were as above related despite anything to the contrary contained in any tentative agreement he may have signed with Transwestern Investment Company, Inc.

6. During the period from immediately prior to the filing of said offer to the date of this Affidavit, said offer has been owned by affiant exclusively, is subject to his exclusive control, and is not subject to any control by

Transwestern Investment Company, Inc., or any other individual or company.

Further affiant saith not.

JACK FRANKLIN
Jack Franklin

Subscribed and sworn to before me this 2nd day of November, 1961.

JAY SALISBURY
Notary Public

My commission expires June 1, 1963.

Exhibit B-2

AFFIDAVIT OF JACK FRANKLIN

Jack Franklin, being duly sworn, deposes and says:

1. That he is a plaintiff in the captioned action and that he has read the Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended, which has been filed in the subject action.

2. That affiant has never been investigated in this matter; that he has never had an opportunity to present testimony regarding the circumstances surrounding his lease offers, and that, therefore, any and all allegations contained in the Defendant's Statement of Material Facts which refer to "each of the plaintiffs", or which otherwise directly refer to actions or interests of this plaintiff, can be based only upon surmise or conjecture. Affiant particularly states that at this late date he cannot remember if he ever signed any agreement with Transwestern Investment Company, Inc. Affiant does not know of any basis for the defendant's statements that this plaintiff signed such an agreement before the drawing.

3. Affiant has at all times been the real party in interest in his lease offer because:

(a) He selected the lands.

(b) He furnished his own funds.

(c) He was and remains in sole control of the sale or assignment of the offer.

(d) He is and has been free to sell the offer himself at any time and retain all profits.

(e) His offer was filed in accordance with law and regulation, and as an individual citizen acting strictly in his own right and in collusion with no one.

JACK FRANKLIN
Jack Franklin

STATE OF TEXAS }
COUNTY OF DALLAS } ss.

Subscribed and sworn to before me this 10th day of December, 1963.

BOBBIE L. SCHOOLER
Bobbie L. Schooler
Notary Public

My commission expires: 6/1/65

(Seal)

Exhibit C-1

AFFIDAVIT

STATE OF TEXAS }
COUNTY OF DALLAS } ss.

R. L. Madden, being first duly sworn on oath, deposes and says as follows:

1. During September, 1958, he executed a number of Forms 4-1158, OFFER TO LEASE AND LEASE FOR OIL AND GAS, had his signatures witnessed, and delivered the same,

together with a number of his personal checks, each in amount of $1,300.00, and each payable to the U. S. Bureau of Land Management, to a representative of Transwestern Investment Company, Inc., subject to the following understandings and agreements:

a. Transwestern Investment Company, Inc., was delegated to cause said Forms to be completed so as to constitute valid offers on no more than 39 predetermined tracts of land, the descriptions and locations of which were mutually agreed upon at that time. Additionally, Transwestern Investment Company, Inc., undertook to insure that not more than one of said offers was to be field on any one tract of land, and to further insure that said offers would be timely filed with the Fairbanks Office of the U. S. Bureau of Land Management for participation in a simultaneous drawing in accordance with duly promulgated special regulations.

b. The funds represented by the said checks were exclusively the affiant's own, and any leases issued pursuant to any successful offers, even should he be successful on more than one offer, were to be exclusively his own.

c. Transwestern Investment Company, Inc., as his agent, was entitled to earn a share in any profits derived from a sale of any of said leases in the event said sale was arranged by Transwestern Investment Company, Inc.

d. The agency agreement between affiant and Transwestern Investment Company, Inc., was terminable at will by either party, and affiant was free to sell any of said leases at any time to any purchaser that he might develop for his own account without obligation to share any profits with Transwestern Investment Company, Inc., or anyone else.

2. During October, 1958, one of affiant's offers so filed, covering Block 7, Township 1 South, Range 5 East, UPM, Alaska, was awarded second priority at the simultaneous drawing.

3. Affiant had no interest, direct or indirect, in any other offer filed simultaneously on Block 7, Township 1 South, Range 5 East, UPM, Alaska.

4. Affiant was, at the time of said filing, and is now a native born citizen of the United States. His interests, direct and indirect, in oil and gas leases and applications or offers therefor did not at that time nor do they now exceed 100,000 chargeable acres in Alaska, and he was at that time and is now over 21 years of age.

5. Prior to the date of filing of said offer, his agreements and understandings with Transwestern Investment Company, Inc. were as above related despite anything to the contrary contained in any tentative agreement he may have signed with Transwestern Investment Company, Inc.

6. During the period from immediately prior to the filing of said offer to the date of this Affidavit, said offer has been owned by affiant exclusively, is subject to his exclusive control, and is not subject to any control by Transwestern Investment Company, Inc., or any other individual or company.

Further affiant saith not.

R. L. MADDEN
R. L. Madden

Subscribed and sworn to before me this 17th day of October, 1961.

GLADYS LESLIE
Notary Public

My commission expires June, '63.

(Seal)

Exhibit C-2

AFFIDAVIT OF ROBERT L. MADDEN

Robert L. Madden, being duly sworn, deposes and says:

1. That he is a plaintiff in the captioned action and that he has read the Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended, which has been filed in the subject action.

2. That affiant has never been investigated in this matter; that he has never had an opportunity to present testimony regarding the circumstances surrounding his lease offers, and that, therefore, any and all allegations contained in the Defendant's Statement of Material Facts which refer to "each of the plaintiffs", or which otherwise directly refer to actions or interests of this plaintiff, can be based only upon surmise or conjecture. Affiant particularly states that at this late date he cannot remember if he ever signed any agreement with Transwestern Investment Company, Inc. Affiant does not know of any basis for the defendant's statements that this plaintiff signed such an agreement before the drawing.

3. Affiant has at all times been the real party in interest in his lease offer because:

(a) He selected the lands.

(b) He furnished his own funds.

(c) He was and remains in sole control of the sale or assignment of the offer.

(d) He is and has been free to sell the offer himself at any time and retain all profits.

(e) His offer was filed in accordance with law and regulation, and as an individual citizen acting

strictly in his own right and in collusion with no one.

ROBERT L. MADDEN
Robert L. Madden

STATE OF TEXAS }
COUNTY OF DALLAS } ss.

Subscribed and sworn to before me this 10th day of December, 1963.

OLIVE WILBRAHAM
Notary Public

My commission expires: June 1965.

Exhibit D-1

STATEMENT OF MELVIN R. MAILLOUX

Mr. Kennedy: Q. 1: Mr. Mailloux, we have turned on the recorder and I believe that we should establish the date, time, and place of this meeting and the names of those in attendance here. It is now about 9:30 on October 10, 1960. The location is room 5646, Interior Building, Washington, D. C. My name is Frank Kennedy and this is Lowell Peart of our office, who will operate the tape recorder. No one else is in attendance here, nor will anyone else be here. As you know from our previous discussion on the subject, the purpose of this meeting is to obtain any information you may have on the leasing activities of John J. King of Denver, Colorado, and Transwestern Investment Company of P. O. Box 1161, Dallas, Texas, and your connection with Mr. King and the company, particularly with respect to the offers filed by Mr. King in the Fairbanks Land Office, on September 28, 1958. Now Mr. Mailloux, do you have any questions?

Mr. Mailloux: No, none at all, I'm just glad to help you out with any of this information that I can give you.

Mr. Kennedy: Q. 2: Do you have any objection to having the discussion recorded?

Mr. Mailloux: No, No sir, it's perfectly all right with me.

Mr. Kennedy: Q. 3. And you are here for the purpose of this discussion on a purely voluntary basis.

Mr. Mailloux: Yes, certainly.

Mr. Kennedy: Q. 4: There has been no compulsion.

Mr. Mailloux: No, none whatsoever.

Mr. Kennedy: Q. 5: Or influence of any kind.

Mr. Mailloux: No, none whatsoever.

Mr. Kennedy: Q. 6: I believe the best way to handle this discussion is on a question and answer basis.

Mr. Mailloux: Right.

Mr. Kennedy: Q. 7: But if I ask any question you do not want to answer, for any reason, whatsoever, I want you to feel perfectly free to say that you do not care to answer.

Mr. Mailloux: That's all right.

Mr. Kennedy: Q. 8: Also, if you would like to discuss a question off the record we will turn the recorder off and discuss it off the record. Please feel free, perfectly free, to enlarge on an answer or to clarify or to explain an answer so that there will be no doubt about your answer. Will you state your full name please?

Mr. Mailloux: Melvin Ralph Mailloux.

Mr. Kennedy: Q. 9: Ralph?

Mr. Mailloux: Yes, Ralph—middle name.

Mr. Kennedy: Q. 10: What is your present address, Mr. Mailloux?

Mr. Mailloux: 1910 Everest Street, Silver Spring, Maryland.

Mr. Kennedy: Q. 11: What is your present occupation?

Mr. Mailloux: I'm a salesman for the Grace Paper Company, Puerto Rico.

Mr. Kennedy: Q. 12: Were you formerly employed by Transwestern Investment Company of Dallas, Texas?

Mr. Mailloux: That is correct.

Mr. Kennedy: Q. 13: What position did you hold with Transwestern?

Mr. Mailloux: I was Vice President.

Mr. Kennedy: Q. 14: What were your duties at that time, Mr. Mailloux?

Mr. Mailloux: Well, we were primarily over the counter broker dealers and I acted as salesman, did some bookkeeping—account work for them, just acted in a general executive capacity, I would say.

Mr. Kennedy: Q. 15: When did you terminate your employment with Transwestern?

Mr. Mailloux: Well, I sold out my interest in the company in 1959, I believe.

Mr. Kennedy: Q. 16: What were the circumstances surrounding the termination of your employment?

Mr. Mailloux: Perfectly amicable. We were just in a very tough business there—for a small two man shop against the big houses. We were solvent at the time of our dissolution. It was just a voluntary dissolution, we would go our separate ways.

Mr. Kennedy: Q. 17: Can you give me the names of the other officials of the company?

Mr. Mailloux: Robert Foley was the President. Robert R. Foley of Dallas, Texas. We had just two officers—just a two man proposition and we were the two directors. President and I, I acted as Vice President and Treasurer. That filled the necessary offices.

Mr. Kennedy: Q. 18: I believe that Mr. Foley is sole owner of Transwestern.

Mr. Mailloux: That is correct at the present time.

Mr. Kennedy: Q. 19: What was the nature of Transwestern's operations during your association with the company?

Mr. Mailloux: We were registered broker dealers with the S.E.C. and the members of the National Association of Security Dealers, the NASD, and conducted a brokeraging business—primarily, we bought, sold, traded on our own accounts, traded for customers, just acted in largely the over the counter stock market.

Mr. Kennedy: Q. 20: Was this venture in the Federal oil and gas leasing field the only venture in oil and gas leasing by Transwestern while you were associated with them?

Mr. Mailloux: Yes, I believe it was.

Mr. Kennedy: Q. 21: Are you acquainted with John J. King of Denver, Colorado?

Mr. Mailloux: Yes, I am.

Mr. Kennedy: Q. 22: And I believe he is President of Cortez Oil Company?

Mr. Mailloux: That's his company, I guess he is President. I would assume so.

Mr. Kennedy: Q. 23: How long have you known Mr. King?

Mr. Mailloux: Well, I met him in the Fall of 1958, I'd say about the very end of August or the beginning of September, 1958. About a month before we got into that venture.

Mr. Kennedy: Q. 24. Did Mr. King have any connection with Transwestern Investment Company prior to Transwestern's entry into this oil leasing venture?

Mr. Mailloux: Never heard of John J. King or met him or knew of him or anything like that. No connection with him at all.

Mr. Kennedy: Q. 25. Will you explain how Transwestern, that is Mr. Foley or yourself, became interested in the Gubik leasing venture?

Mr. Mailloux: One day I was walking down to the office of our attorneys, Kilgore and Kilgore, 2400 Adolphus Tower, Dallas, Texas, visiting there with an attorney in there by the name of Mr. Aberth who represented our company. I knew and was friendly (in sort of a social way) with some of the other attorneys in there and I chatted with them and I passed the door of the attorney, who was in the office adjacent to Mr. Aberth's, a fellow by the name of Bill Garrett. Bill called to me "Hey, Mailloux," he said, "take a look at this here." "I've got a friend that was in the Navy, I've known him all my

life—I grew up with him, and he's interested in this Gubik thing. He asked me as a favor if I could help him and get some people interested in these leases up there." So that is how I originally came in contact with both King and Gubik area leases.

Mr. Kennedy: Q. 26. Could you give the names of all the persons, other than the applicants themselves, who were to profit from this venture?

Mr. Mailloux: All of the persons, other than the applicants, who were to profit from the venture. Well if we were able to get any profit from this venture, it's a conditional thing, the profit was to be divided, in other words, once the people got their money back and things were sold for profit. One half of the profit was to go to King (and he was working with an associate by the name of Burnside, I believe).

Mr. Kennedy: Q. 27. What was that name?

Mr. Mailloux: Burnside, I believe.

Mr. Kennedy: Q. 28. Burnside.

Mr. Mailloux: Burnside was around with him and seemed to know about this area. But anyway half went to King's side and the other half was, I presume, for Foley and myself. In other words, there would be a division between ourselves.

Mr. Kennedy: Q. 29. Could you give me Mr. Burnside's full name?

Mr. Mailloux: Gosh, I've forgotten his full name. I just keep thinking of him as Burnside. Perhaps I have it here in these papers. It's Mr. R. J. Burnside.

Mr. Kennedy: Q. 30. Where does Mr. Burnside live? Could you tell me that?

Mr. Mailloux: He's from Denver. I believe he is up there with Mr. King—associate with him.

Mr. Kennedy: Q. 31. I see. Could you give me all of the circumstances surrounding your meeting with Mr. King and your discussion of this leasing venture and just what his proposition was, Mr. Mailloux?

Mr. Mailloux: Certainly. Up and to this time I was completely unfamiliar with Federal oil and gas leasing. I met him at Mr. Garrett's house, we had dinner one evening, and he explained to us that there were Federal oil and gas lands available for leasing and that any citizen could go to this area and file on I think it was up to a hundred thousand acres of these lands and at a cost—fifty cents an acre. There was to be a date at which it was considered that every one that filed up to that date, would be considered as having filed simultaneously and that this was going to occur in the latter part of September of 1958. He suggested that it would have great value and might be an interesting investment proposition for use and the people that we knew or might know who would be interested in participating in this as individuals. He said that if we knew these people that applied for these leases and if they were successful in acquiring blocks of leases, that is, adjacent acreage or any kind of spread at all in these well selected areas, that we would be in a position to perhaps act as their agent and to sell them to some oil company and perhaps get some profit out of it to share among ourselves.

Mr. Kennedy: Q. 32. You actually made the contacts among them?

Mr. Mailloux: Yes. I wasn't a salesman because I didn't have any lease to sell but I went around and told these people that this opportunity was available. You go file on it, pay your money and if you are selected you pay your $1300. Then it is your lease. The thing that we would like to do is represent you because we know where you are and we were the persons who steered you on to the lease, in other words, told you where to go find it. If we act collectively together in selling these leases we would be in a position to ask for more money than we would if were just individuals. The lessees would get their money back and share in the profits—the selling profits.

Mr. Kennedy: Q. 33. On what basis were the prospective applicants contacted? Were these people personally known to you in advance or what led you to contact these particular individuals in the first place, Mr. Mailloux?

Mr. Mailloux: Well, it's the same thing in this case (as my other business) I'm just looking for an individual that has the money to go ahead and look for an investment. A couple of them were people that I know in Dallas, (I'd done some stock business with them). They introduced me in turn to some friends of theirs—just anybody I could interest in the proposition. Just the same as selling a mutual fund—just anybody.

Mr. Kennedy: Q. 34. And you were able to interest as I recall, about 58 people.

Mr. Mailloux: Yes. There were all separate individual people—there would not be but one or two of them that had even known each other before. By and large, they were all a group of strangers to each other.

Mr. Kennedy: Q. 35. Will you explain the procedures used in obtaining signatures to the applications?

Mr. Mailloux: Do you mean how they actually signed the oil and gas applications? Well I was under a tremendous pressure for time in this situation and I inquired from—I guess it was the Government Printing Office in the Federal Building in Dallas or someplace, about the availability of leasing forms. I was told that I couldn't get enough of them to do it—they give these things out but the most copies was six. What we had contemplated for these people were pretty heavy filings, in other words, one person would go out and file on his given tracts. File on all of 100,000 acres in hopes of maybe getting one drawn on which he would pay his check. His check was already sent in, of course, with it. Finally to facilitate the handling of it, we checked with our attorneys who said photostat (an off-set production) of this form was acceptable. So we went out and printed up stacks of these things. The form said to send in

3 copies and we kept one copy. I think that each person had a pile about an inch high of each form. We would go to the person and we would tell him what these various blocks were that we suggested that he file on. We would give him the block number and the specific location. Then the person would sit down by himself, his own true signature, and go through (the forms) and sign all of those things to be filled out—every one an original signature. They would go through and sign them one right after another. It took them about 40 minutes to sign them in person.

Mr. Kennedy: Q. 36. Then I take it that the applications were signed in blank, with the land description filled in later by someone other than the applicant.

Mr. Mailloux: We did the clerical work involved and the people signed the signatures themselves.

Mr. Kennedy: Q. 37. After you received the blank application from the applicant, signed, you then filled in the land description and filed it in the Land Office.

Mr. Mailloux: Yes. We gave a copy of what we had filled in to the people so that they knew where they were filing.

Mr. Kennedy: Q. 38. Who completed the application form?

Mr. Mailloux: Do you mean who did the typing?

Mr. Kennedy: Q. 39. Yes.

Mr. Mailloux: Oh, some girl in Mr. King's office in Denver I believe.

Mr. Kennedy: Q. 40. That office was in Denver.

Mr. Mailloux: Yes, the Denver office.

Mr. Kennedy: Q. 41. I note that the names E. C. Bowe and Kay Miller appear quite frequently as witnesses for the offers. Who is E. C. Bowe?

Mr. Mailloux: He's a friend of mine, an American Air Lines pilot—he's retired now. He was a friend of ours.

Mr. Kennedy: Q. 42. He had no connection with the company?

Mr. Mailloux: Oh no, no connection with the company.

Mr. Kennedy: Q. 43. Who is Kay Miller?

Mr. Mailloux: Kay Miller was a girl that I had in my office as temporary help. She was a secretary in my employ and when people came in the office to sign these things she was right there and witnessed them.

Mr. Kennedy: Q. 44. That leads up to my next question. Were the signatures on the applications witnessed at the time they were signed?

Mr. Mailloux: Yes.

Mr. Kennedy: Q. 45. In other words, they did not sign the application and then at a later date someone witnessed the signature while they were being filled in or anything like that?

Mr. Mailloux: No. They didn't sign them in blank like that. I guess I witnessed some myself—if I was with a person. If the person came to the office Miss Miller would witness the signature. Whoever was right there at the time would witness it.

Mr. Kennedy: Q. 46. This is Miss Kay Miller is that right?

Mr. Mailloux: Yes.

Mr. Kennedy: Q. 47. Does she live in Dallas now do you know?

Mr. Mailloux: I don't know. She was just a temporary girl we hired.

Mr. Kennedy: Q. 48. Each of the 58 applicants, I believe that is the right number, signed 39 applications. Is that correct?

Mr. Mailloux: Yes.

Mr. Kennedy: Q. 49. The reason for that was that there were 39 available tracts in the Gubik area that you intended to file on. Is that correct?

Mr. Mailloux: Yes, there were 39 but also you could only sign for 39, any one individual, because of the acreage limitation. You see 40 times 2500 comes to 100,000. We didn't want them to file over 100,000.

Mr. Kennedy: Q. 50. Each of the 58 individuals furnished signed checks in the amount of $1300 for each application. Is that correct?

Mr. Mailloux: That is correct.

Mr. Kennedy: Q. 51. They also paid an additional $39 or $1 per application for handling purposes.

Mr. Mailloux: Yes, for handling and clerical work.

Mr. Kennedy: Q. 52. What was the understanding with respect to the 39 checks signed by each offeror concerning the amount he or she was to have in his account to cover these checks?

Mr. Mailloux: There was no firm understanding on that. We knew by reading the description of this offer in the Federal Register—it said that the checks, that is, the envelopes that were not successful would be returned to the people that sent them in. The ones that were opened, the check would be accepted as payment. The person would have to have $1,300 or he would not get the lease—he would have to pay for it.

Mr. Kennedy: Q. 53. Now I believe that the correct amount of filing fee and advance rental was $1290. How was the amount of $1300 arrived at?

Mr. Mailloux: You can't put postage stamps on an orange without getting an overlap. As I explained to the people, some of these tracts were not exactly square. Some of them ran a little more or less than 2560 acres but no one would run more than $1300. They paid their own $10 filing fee. We didn't want anybody to be disqualified on that basis.

Mr. Kennedy: Q. 54. May I show you here an agreement signed by H. David Lassiter. Was this agreement signed by each of the 58 applicants?

Mr. Mailloux: Yes, sir. I'm almost sure it was, that's why we wanted to have this chance to sell, that was the object of the whole thing to have the people sign.

Mr. Kennedy: Q. 55. Who prepared that form of agreement?

Mr. Mailloux: I asked Kilgore and Kilgore to get me some sort of form to accomplish this thing and set it out. Kilgore and Kilgore prepared it.

Mr. Kennedy: Q. 56. And they are in Dallas.

Mr. Mailloux: They are attorneys in Dallas. Yes.

Mr. Kennedy: Q. 57. Who advised you to add the addendum regarding the client's rights to more than one lease?

Mr. Mailloux: Mr. Garrett. We were rushing into this thing awfully fast because we had just a couple of weeks to go. I had told him that I wanted the original agreement in three hours. He left something out and maybe he had a chance to think about it a little bit further. I guess he was worried and when I got to thinking about it I was concerned about it, that is, the arrangement where if a person got more than one lease, that lease would go to Transwestern. We had an opportunity to buy this land, if the lessee won more than one. When we originally started, it was my thought that in the anticipated heavy filing that it would be statistically near impossible for anybody to get more than one lease. When we got to thinking about it we said well look, if some fellow comes up with 3 or 4 leases and he keeps the first one under the terms of the agreement and turns the next ones over to us, that fellow has acted as kind of a front for us in acquiring those leases. To negate that—we were in midstream in signing these people up—I started writing out this addendum which I signed myself and attached on to here to get this contract changed in meaning. We committed ourselves to its meaning so that the person could be paid for the lease. He would have to pay of course to keep those additional leases, so that we could get ourselves out of this position of having him acting as a front for Transwestern to acquire leases.

Mr. Kennedy: Q. 58. I think you have pretty well given your reasons for adding the statement. Do you recall what particular agreements was it added to?

Mr. Mailloux: My general reaction to the thing is that when we started out on this thing I was very busy so I started writing out hand written copies and going to the people that I knew and saying "Look attach this on." Some of them I gave to Mr. Bowe as he had some friends in his neighborhood that were interested in this thing and were participating in it. This fellow across the street, Perry Wallace, I guess I gave Ed the one to take to Perry. Some of them I attached myself and some of them I gave to Ed to put on. I just put them on everywhere to make sure that everybody got a hold of one of these things.

Mr. Kennedy: Q. 59. Then it was your intention that they should be attached to all the copies.

Mr. Mailloux: Oh, yes. To all our copies to this agreement, the other people had a copy and we had a copy, we attached them to all of our copies.

Mr. Kennedy: Q. 60. Mr. Wallace gave me a copy of this agreement and I note that this addendum is not attached to this agreement.

Mr. Mailloux: It may be that I gave it to him or that Ed gave it to him. You can lead a horse to water but you can't make him drink. The proof of the pudding, so to speak in this particular point Mr. Kennedy is that when we did come up with the drawing Transwestern, in fact, did not receive any leases from those who had won more than one.

Mr. Kennedy: Q. 61. They did not.

Mr. Mailloux: They did not.

Mr. Kennedy: Q. 62. Was this addendum added before or after the drawing was held?

Mr. Mailloux: It was added before. Everybody that had come in on the deal had turned in their application to be processed through the paperwork and there were several days in here in which they had to go to Denver and then Mr. King had to fly them up, you see they weren't mailed. So all this paperwork, the addendum, all this was done before the drawing, well before the drawing. I'd say close to 3 or 4 days before.

Mr. Kennedy: Q. 63. Did each offeror consent to the addition of this addendum to each of his offers in writing or otherwise.

Mr. Mailloux: Well, they often consented to it verbally. And I suppose that they consented to it in writing because I told them to put that thing on there and to notice that I'd signed it and that they should initial it. I told them that they did not have to sign it necessarily but that they should attach this thing and initial it, so that it would be binding on everybody.

Mr. Kennedy: Q. 64. What if any knowledge did the applicants have concerning the potential value of this Gubik area for oil and gas leasing? Of his own knowledge, that is.

Mr. Mailloux: Of his own knowledge? I suppose a lot of the people had been in the oil business at least in Texas. I don't know what they think, it's hard to tell.

Mr. Kennedy: Q. 65. Please describe the understanding between Transwestern and each of the applicants concerning the signing of the lease offer in blank. I think that we have covered that somewhat, Mr. Mailloux, but let's go into that a little further. Was the land description left to the discretion of the person who completed the form.

Mr. Mailloux: No. When I approached these people I would tell them, as part of my sales presentation, that here is the area, it's up within the Arctic Circle, here is area of petroleum reserve down on the coast. The Navy has spent quite a bit of money up there and they've found some oil. They have oil in the Gubik structure and to the east of that (and I'd show them a little map and a specific plot) are the ones we want to file on. These and no others. We pointed the 39 specific tracts and told them why we thought they were attractive, because of magnetometer work through here. These tracts were the ones that we wanted them to file on and we were really acting as their agent to do the clerical work for them.

Mr. Kennedy: Q. 66. I see. Now, pursuant to the terms

of the original agreement, Mr. Mailloux, do you not believe that Transwestern's chances of success in the drawing was greatly increased by the practice of filling in the signed blank offers so that it would have multiple offers on the same tract.

Mr. Mailloux: No. Would you ask that question again, please, Mr. Kennedy?

Mr. Kennedy: Q. 67. According to the original agreement all leases but one drawn by any one applicant, if they were successful in drawing more than one lease, they assigned the extra leases to Transwestern. That was under the terms of the original agreement before the addendum was added. Do you not believe that increased Transwestern's chances of success in the drawing?

Mr. Mailloux: The agreement that was in effect at the time of the drawing had this addendum to it that took Transwestern out of the picture. Transwestern didn't have any chance when the drawing took place because these people were all acting as individuals. We didn't know how many people were filing up there or how we would come out or if we would ever even add any value by knowing people that acquired adjacent acreage. In other words whether the job of assembling the acreage would be done by our steering these people in there or encouraging them to exercise their rights as citizens to file. You see this thing happened so fast—there were only something like ten days time in which I had to get these people's signatures. After we started out with the agreement, the additions were put on (half way through the filing). So half the people were signed—30 people at least were signed out with the second contract, which was the only one they ever saw with the addition on it and those additional people were handed the amendments before the drawing took place. Our main thought was not in increasing Transwestern's chance but of getting this acreage, but merely getting people that we would know together up there and that we would have contacts

and be able to act as a block for sales presentation to the major oil companies. Does that answer that question for you, Mr. Kennedy?

Mr. Kennedy: Q. 68. I think that it does, however, I'm just pursuing it a little further. It would seem to me that under the terms of the original agreement, and I understand that the addendum was attached before the drawing and that its provisions were in effect at the time of the drawing, but under the agreement as it was originally prepared it would seem to me that the chances of Transwestern's success in the drawing was increased by the fact that you were filling in the signed blank offers, and filing multiple offers on the same tract. In other words, Transwestern had a better chance than anyone else in the drawing it would appear to me.

Mr. Mailloux: Well, look at it this way. The average filing density up there was about one hundred filed on each tract. There were only 39 tracts that we were interested in. If you had 39 fish bowls running across this desk and you had an individual coming up and there are 100 numbers or capsules with numbers in each fish bowl, so the way the thing worked out statistically as the man went down from fish bowl to fish bowl, he was taking a one-in-one hundred chance of getting it. It occurred to us that the chances of a person (just taking 39 chances) being a 100 to 1 shot winner twice were virtually none. It would be near impossible.

Mr. Kennedy: Q. 69. One applicant did actually draw more than one lease didn't he?

Mr. Mailloux: Yes, that was about a one in a million chance. We certainly didn't undertake this thing with the objective of increasing our chances or loading the drawing in favor of Transwestern. It was just a procedural error on our part in not drawing up the contract correctly that expressed our intentions at the very beginning.

Mr. Kennedy: Q. 70. Mr. King was the originator of the whole idea, was he not? He started it or was the one who presented it to you.

Mr. Mailloux: Yes, he presented it to us.

Mr. Kennedy: Q. 71. Who was to have the exclusive authority to negotiate sale of these leases—was it Transwestern or Mr. King?

Mr. Mailloux: I don't know if we ever formalized that or not. It was kind of understood or felt, I would say, that since John King had knowledge of the area and was in the oil business (we are in the investments business) and had looked into the geology of the area, that he would be the natural one to find somebody to buy.

Mr. Kennedy: Q. 72. Could you give me the circumstances and the conditions of the sales of any leases negotiated by Transwestern? Did they sell any of these leases?

Mr. Mailloux: Did Transwestern sell any of these leases? For example, do you mean the leases of Leon Harris. We didn't have any leases to sell.

Mr. Kennedy: Q. 73. I mean as agent.

Mr. Mailloux: Oh, as agent.

Mr. Kennedy: Q. 74. As agent did you negotiate the sale of any of the leases that were acquired as a result of this drawing.

Mr. Mailloux: King has done the sales work on that.

Mr. Kennedy: Q. 75. Mr. Harris acquired two or three of these leases, I'm not sure of the exact number. Did Transwestern or Mr. King have anything to do with the negotiations of that sale?

Mr. Mailloux: Some of the people, after they found out that they had gotten the lease, for one reason or another (someone may have told them that they were crazy to have taken a deal on the Arctic Circle, or for some reason known only to themselves) indicated a willingness to sell out their rights. I then went to Leon Harris, who is not in the oil business but is a pretty wealthy department store executive, and I told him of this opportunity and gave him my opinion of what it was worth. He said, "Well, I'll take a flyer on it." He assumed their posi-

tions. We didn't take any commission on these as we didn't have the lease to sell to him. We just pointed out to him that there is somebody who has a position, holds a lease, and wants out. He said, "I'll take a shot at it." So he assumed their position.

Mr. Kennedy: Q. 76. In other words this is just a case where the lessee wanted out and you found a place where he could sell.

Mr. Mailloux: Yes. I found somebody that would take his rights.

Mr. Kennedy: Q. 77. Can you tell me who George P. Caulkins, Jr., is?

Mr. Mailloux: Who?

Mr. Kennedy: Q. 78. George P. Caulkins, C-a-u-l-k-i-n-s, Jr., in Oklahoma City, Oklahoma.

Mr. Mailloux: George P. Caulkins of Oklahoma City, Oklahoma.

Mr. Kennedy: Q. 79. His name appeared in this thing—he may not have any connection whatever with these filings, but if he did were you familiar with his part in it.

Mr. Mailloux: No. I've searched my memory and I don't know of him. I certainly have never met any man or had any business arrangements with any man named George P. Caulkins of Oklahoma City.

Mr. Kennedy: Q. 80. Are you sure that he is not one of the Dallas group?

Mr. Mailloux: No, he is not.

Mr. Kennedy: Q. 81. While we are on the subject, do you know Duncan Miller?

Mr. Mailloux: No. I've never met him.

Mr. Kennedy: Q. 82. There was some indication by the land office that Mr. Miller's offers gave some evidence of being prepared on the same typewriter or at least by the person who prepared the Box 1161 offers. They thought that there were some of the same distinguishing characteristics. Did Mr. Miller have any connection with you or the company at any time?

Mr. Mailloux: No. I never met Mr. Miller, never corresponded with him or had any association with him whatsoever.

Mr. Kennedy: Q. 83. There are presently pending, assignments to Transwestern of four of the leases acquired as a result of these drawings. To what extent did Mr. King participate in the negotiations for those assignments. I will give you the serial numbers. They are: 021356, Mr. Devain Clark; 021406, Perry Wallace, Jr.; 021456, Mr. Robert L. Gerry, Jr.; and 021457, Miss Kay Miller, incidentally, the Miller lease has not been issued. Did Mr. King participate in the negotiations for the assignment of the leases to Transwestern?

Mr. Mailloux: Did he participate? Well, if I recall those leases correctly (I've got to fish on my memory a little bit here)—I think that they were going to be bought by the Texas Company. The reason that it went through Transwestern is that apparently when you take out an overriding royalty (which it was in this case) the most convenient way to do it is to pass the lease from one person and he reserves that when he reassigns it to another. That's why it was going through Transwestern. But it was on its way up to Texaco, because they wanted to buy—and were in the process of buying—these particular four leases.

Mr. Kennedy: Q. 84. I note here a letter from Mr. Foley to Texaco concerning these assignments that we have been discussing here. They were assigned to Texaco for quite a sizeable sum. According to Mr. Foley's letter, it says, "We understand the sales terms to be $4 per net mineral acre plus 2% total overriding royalty. Upon execution of the option agreements then, we look forward to the receipt of $30,320 being $4 per acre for Fairbanks 021356, 021406, and 021456, and $1,280 being fifty cents per acre for Fairbanks 021457. (Incidentally, that is the lease that was not issued.) Upon issuance of Fairbanks 021457 we will look forward to receipt of an additional $8,960 being

$3.50 per acre therefor. Total consideration coming to $40,560. In accordance with the enclosed letter of July 24, 1959 from the Cortez Company to you, payment of consideration should be made directly to Transwestern Investment Company, Incorporated."

Mr. Mailloux: What is your question in connection with that?

Mr. Kennedy: Q. 85. These leases were assigned to Transwestern Investment Company.

Mr. Mailloux: Oh. And Transwestern was to get the money. The way that came about was that in accordance with our agreement with John King, John negotiated the sale of these leases to the Texas Company. John was to make and close the deal. Then came the problem of doing the paperwork on them and although John made the deal it was decided that we would divide the profit, the override was considered part of the profit so one percent of the overriding royalty was assigned to Transwestern and the person that originally had the lease reserved to himself one percent. Transwestern assigned it to Cortez Oil Company, reserving one half of that one percent, and I presume that Cortez Oil Company, King, then assigned it on to the Texas Company and took out the other half of the one percent. So by the time the lease got to the ultimate buyer the 2% had been carved out by reservations. As far as the money is concerned, the check was sent to us only because more of the money was to stay in the Dallas area. We wanted to pay off our people and pay off Transwestern. It was just a convenient place to process the banking.

Mr. Kennedy: Q. 86. Then according to the terms of the agreement the lessee in each of these cases would receive 50% of the net. Is that right?

Mr. Mailloux: Yes, they got their money back. Their $1339, their original 50¢ an acre, and then they got half of the cash which came from the override.

Mr. Kennedy: Q. 87. In a letter from Mr. King to the Fairbanks Land Office, he refers to seventy-three clients.

Could you tell me whether or not Mr. King had other clients who had filed offers at the same time and on the same tracts that were filed upon by the Dallas group?

Mr. Mailloux: No. He may have known other people who were filing as individuals in the area but, as far as I know, nobody else filed on ours (our particular 39 tracts).

Mr. Kennedy: Q. 88. Could you furnish me with the names and the home address of each of the applicants?

Mr. Mailloux: That's quite a large order.

Mr. Kennedy: Q. 89. Do you happen to have them?

Mr. Mailloux: No.

Mr. Kennedy: Q. 90. Don't go to any trouble to obtain them for me or anything I thought you might have with you a list of those persons.

Mr. Mailloux: No, I don't. I sure don't. They are Dallas people, I suppose your Dallas telephone directory would be as complete a source as any.

Mr. Kennedy: Q. 91. Mr. Foley would not be apt to have that information, would he?

Mr. Mailloux: Strangely, we never made a list of all the people.

Mr. Kennedy: Q. 92. What was Mr. Foley's connection with this venture other than being President of the company. Did he have any actual contact with these individuals?

Mr. Mailloux: No, he didn't have any contact with them. I'm the only one that did. It was "my baby." I did most of the work.

Mr. Kennedy: Q. 93. He was not active in this particular venture, is that correct?

Mr. Mailloux: No, he didn't make a single sales presentation.

Mr. Kennedy: Q. 94. If there is anything else, Mr. Mailloux, that you would like to add to this statement, I want you to feel perfectly free to go ahead and make any statement that you would like or if there is any additional information that you would like to bring out which I

haven't covered, I would appreciate it if you would fill it in.

Mr. Mailloux: No, I don't think that there is anything. We have tried to do everything that we could to give you the information that you needed. We were kind of fish out of water on this business. We were not pros or we probably would have handled this a lot differently. Our company was established and has been in business for five or six years as an over the counter house. We just happened to get into this one particular thing. We were not organized specifically for the purpose of making a lease play out there. It turned out well for a number of our people, but our main thought was to see that people got in there acted as individuals but we would know who they were so that we could have this lease block in dealing with those developing the area. If you have any further question I would be more than glad to cooperate in giving you the answers.

Mr. Kennedy: Q. 95. I believe that there might be one thing that I would ask. I may have asked it before. By the terms of this agreement Transwestern Investment Company had the exclusive right, as agent, to negotiate for the sale of these leases. You were to act as agent for each one, is that correct?

Mr. Mailloux: Not really. We didn't really look upon that as binding. For example, there is no time limit. A person can say "You haven't sold it, three to six months have gone by" and he could step out and sell it. We would have no complaint or gripe about that. I don't think that we would have any legal rights against an individual who says "I don't like the way you're acting as agent. You haven't come in with a buyer or a profitable offer. So just forget about it, I'm going to sell it to somebody else." We have always viewed that a person can do that. You've got to just trust to luck. It's a strange area and you think that you may know a little more about it than the person who draws. As a matter of fact one fellow did dismiss us. Harris dismissed us as his agent. Anybody else

was free to do so. Harris acquired some of these leases to take the place of the person that wanted out. Time went on. Apparently, when I originally talked to him he got the impression that this was going to be quite an active area. So he wrote us a letter and just dismissed us, as being his agent on this particular situation. Apparently, he did not think we were doing a good enough job on moving this thing along. He wanted some action. So he just dismissed us as agent and from that time on we had no rights. No rights to act as agent for Mr. Harris.

Mr. Kennedy: Q. 96. Then you or Foley or King, or Transwestern, as I understand it, did not profit in any way from the sale of the leases to Mr. Harris.

Mr. Mailloux: No, absolutely not.

Mr. Kennedy: Q. 97. Well, I think that covers it, Mr. Mailloux, we will have this recording transcribed to a written statement and we will mail that to you. Please feel free to make any corrections in the written statement that you want to make, and please feel free to enlarge on or to clarify any of your answers. On behalf of the Director and all of us I want to express my appreciation to you for your cooperation.

Mr. Mailloux: You are more than welcome.

Mr. Kennedy: Q. 98. Thank you.

NOTE: The above is a verbatim copy of the transcription furnished the undersigned in the summer of 1961 by the BLM's Mr. Kennedy, who had at that time a copy signed, but not sworn to, by Mr. Mailloux.

It should be noted, as in the King Interview of June 2, 1961, that Mr. Kennedy claimed—and Mr. Mailloux understood—that its purpose was to substantiate the clients' rights to leases in answer to Duncan Miller's protest, rather than vice versa, as it was subsequently employed by the BLM.

JOHN J. KING
John J. King 8/21/63

Exhibit D-2

AFFIDAVIT

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

Melvin R. Mailloux, being first duly sworn on oath, deposes and says as follows:

1. During September, 1958, he executed a number of Forms 4-1158, OFFER TO LEASE AND LEASE FOR OIL AND GAS, had his signature witnessed, and delivered the same, together with a number of his personal checks, each in amount of $1,300.00, and each payable to the U. S. Bureau of Land Management, to John J. King of 1700 Broadway, Denver, Colorado, subject to the follow understandings and agreements:

a. John J. King was delegated to cause said Forms to be completed so as to constitute valid offers on no more than 39 pre-determined tracts of land, the descriptions and locations of which were mutually agreed upon at that time. Additionally, John J. King undertook to insure that not more than one of said offers was to be filed on any one tract of land, and to further insure that said offers would be timely filed with the Fairbanks Office of the U. S. Bureau of Land Management for participation in a simultaneous drawing in accordance with duly promulgated special regulations.

b. The funds represented by the said checks were exclusively the affiant's own, and any leases issued pursuant to any successful offers, even should he be successful on more than one offer, were to be exclusively his own.

c. John J. King, as his agent, was entitled to earn a share in the profits derived from a sale of any of said leases in the event said sale was arranged by John J. King.

d. The agency agreement between affiant and John J. King was terminable at will by either party, and affiant was free to sell any of said leases at any time to any purchaser that he might develop for his own account without obligation to share any profits with John J. King, or anyone else.

2. During October, 1958, one of affiant's offers so filed, covering Block 7, Township 3 North, Range 19 East, UPM, Alaska, was awarded second priority at the simultaneous drawing.

3. Affiant had no interest, direct or indirect, in any other offer filed simultaneously on Block 7, Township 3 North, Range 19 East, UPM, Alaska.

4. Affiant was, at the time of said filing, and is now a native born citizen of the United States. His interests, direct and indirect, in oil and gas leases and applications or offers therefor did not at that time nor do they now exceed 100,000 chargeable acres in Alaska, and he was at that time and is now over 21 years of age.

5. During the period from immediately prior to the filing of said offer to the date of this Affidavit, said offer has been owned by affiant exclusively, is subject to his exclusive control, and is not subject to any control by John J. King or any other individual or company.

Further affiant saith not.

MELVIN R. MAILLOUX
Melvin R. Mailloux

Subscribed and sworn to before me this 16 day of January, 1962.

LUCY ROBERTA CAVIN
Notary Public

My Commission expires March 30, 1962.

Exhibit D-3

AFFIDAVIT OF MELVIN R. MAILLOUX

Melvin R. Mailloux, being duly sworn, deposes and says:

I. A. That he is a plaintiff in the captioned action and that he has read the Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended, which has been filed in the subject action, and that he has also read the Memorandum of Points and Authorities filed therewith; that at the times when the offers of himself and the other plaintiffs in this action were filed he was Vice-President of Transwestern Investment Company, Inc., and as such was familiar with and directed the clerical and administrative functions performed by Transwestern Investment Company, Inc., for the other plaintiffs in this action and for other individuals who are not parties to this action.

B. In Paragraphs 3 and 7 of said Statement of Material Facts, and on Page 3 of the Memorandum of Points and Authorities, defendant states that prior to the drawing provided for in the Notice, each of the plaintiffs signed an agreement with Transwestern Investment Company, Inc. Affiant states of his own personal knowledge that some of the parties referred to in said Statement and Memorandum signed no agreement prior to the drawing referred to therein. Paragraphs 3 and 7 of the said Statement are materially in error, and this error is repeated in the defendant's Memorandum.

C. Paragraph 4 of the said Statement recites that a similar agreement was entered into with Transwestern Investment Company, Inc. by 50 offerors, and necessarily implies that such agreements were signed prior to the drawing held in Fairbanks, Alaska, on October 1 and 2, 1958. Affiant positively states of his own personal knowledge that some of the offerors signed agreements prior to the lease drawing and some of the offerors did not sign such agreements prior to the lease drawing.

D. This affiant states from his own personal knowledge that each party who was served by Transwestern Investment Company, Inc. in the Gubik-Umiat lease drawing of October 1 and 2, 1958, selected the tracts upon which he or she was to file, and that the agent's only function in connection with the filing of the lease offers was to perform the clerical and administrative tasks necessary to insure that such offers were in proper form and were properly filed. Each plaintiff furnished his own funds and each plaintiff retained full control over and full ownership of any lease which he might have won in the drawing. There was no collusion among the several offerors, most of whom never knew each other. Each offeror filed only such offers as were permitted by law and regulation.

II. A. Although defendant states that each of the plaintiffs signed an agreement with Transwestern Investment Company, Inc., affiant states positively as one of the plaintiffs that he signed no such agreement.

B. Affiant was and has been at all times the real party in interest in his offer until October of 1963, at which time he contracted to assign said offer for a valuable consideration.

MELVIN R. MAILLOUX
Melvin R. Mailloux

Affidavit #691

UNITED STATES OF AMERICA
COMMONWEALTH OF PUERTO RICO } ss.
DISTRICT OF SAN JUAN

Subscribed and sworn to before me this 12 day of December, 1963.

ROBERTO L. CORDOVA
Abogado/Notario

My commission is permanent.

Exhibit E-1

STATEMENT OF JOHN J. KING

Mr. Kennedy: Q. 1. Now Mr. King we have turned on the recorder and I believe that we should establish the date, time and place of this meeting and the names of those in attendance here. It is now about 10:20 a.m. on June the 2nd, 1961, and the place is Room 519, Tower Building at 1700 Broadway, Denver, Colorado. My name is Frank V. Kennedy and this is Jules Tileston of the Bureau of Land Management who will operate the tape recorder and as far as I am concerned, no one else will be in attendance here at the meeting. Now, you are here for the purpose of this discussion, Mr. King, on a purely voluntary basis, is that right?

Mr. King: That is correct.

Mr. Kennedy: Q. 2. And there has been no compulsion, or influence of any kind in order to get you to make this statement, on the part of me or anyone else, is that right?

Mr. King: None at all, as a matter of fact, it is done at my request conveyed to your Mr. Hochmuth in Washington.

Mr. Kennedy: Q. 3. Now, Mr. King do you have any statement or any questions that you want to make at this time, to bring in at this time?

Mr. King: Well, I understand, Mr. Kennedy, that you wish to convert this tape into a written transcription for which you wish me to sign, and for that reason, in order that I will be able to verify the eventual transcription, I have taken the liberty of setting up a dictaphone on which I also am recording these same conversations, and I would say, by way of explanation, that this dictaphone is only good for fifteen minutes, whereas your tape machine is good for at least 4 times that without stopping, so when it gets to the end of its belt, we will hear a bell, at which time I will have to put on a new belt. This can be done rather rapidly, and if you want to turn your recorder off while I am doing that fine, if you want to let it go, why that'll be

fine. I think it only takes about 2 seconds to change the tape, but that will explain what those bells are on your tape. I don't think the bell will record on my tape, I don't know about that.

Mr. Kennedy: Q. 4. Now we'll get right down to business here, and get this over with as quickly as possible. I will commence by making a statement here, asking you whether or not it is correct. On Monday, September 29, 1958, you, Mr. King, filed over 2,000 oil and gas lease offers in the Fairbanks Land Office on behalf of a group of 58 individuals who lived in Dallas, Texas. Is that correct

Mr. King: Substantially so, I'm not certain of the date, because of the fact that it was just prior to the first or second of October, but, I'm not sure of the number, but the number was 58, or approximately.

Mr. Kennedy: Q. 5. Let's say approximately 58. I am not sure of the number, myself. It may be 58 or 59.

Mr. King: And the people were largely from Dallas, Texas. There were some other people from the environs of Dallas.

Mr. Kennedy: Q. 6. The people that I'm concerned with now are the people who lived in Dallas. You had a written agreement with each of your clients with respct to filing the lease offer, did you not?

Mr. King: No sir, I did not.

Mr. Kennedy: Q. 7. There was an agreement between the client and Transwestern Investment Company, is that right?

Mr. King: That's true. To the best of my knowledge.

Mr. Kennedy: Q. 8. Now, I will show you this agreement, and ask you if you know whether that is the agreement that they signed. Incidentally, that was given to me by Mr. Mailloux.

Mr. King: Well, if he said this is what they signed, this is what they signed. I don't know. My relationship, of course, was with Transwestern and theirs was with their people, but I don't see any reason why he would tell you that wasn't the agreement. If he said it was, it was.

Mr. Kennedy: Q. 9. Now, Mr. King, will you tell me in your own words whose idea it was to get this group of people to file, and how Transwestern Investment Company got into the picture, and so forth.

Mr. King: Well, basically, it was my idea. I am not an experienced Federal oil and gas lease man by any stretch of the imagination. I suppose prior to this time I had probably filed a total of four offers, and that about a year and a half before this. But I was very interested in this Area, the Naval Petroleum Reserve, because I did spend 12 years in the Navy, and I got to working with the Navy on their Teapot Dome thing up here, where they wanted a contractor to operate it for them, and I tried very hard to get the job and didn't. When they got into a little trouble with the Senator and with the Paper here, owing to some dissatisfied bidder, and I straightened it out for them, and I was talking about Naval Petroleum Reserves in general being an Annapolis graduate and an oil man, and so they suggested that there was a great opportunity coming loose up near their Petroleum Reserve No. 4, so he told me that the information on it would be published in the Federal Register, so I watched the Federal Register, which is sort of hard to do, since I don't subscribe to it, but there was a service here in town that did, and finally, I think in July, roughly July of '58, there came an announcement in the Federal Register that opened this area to leasing and it set up a very specific set of rules for this particular area. A unique set of rules having to do with how they were going to file this thing. So, I looked at that and I recognized in it an opportunity to make some money for myself and to get the area leased and so forth. I recognized that this would take a lot of people with a certain amount of money, that I didn't have the money myself. I didn't think the thing was getting all the publicity that it might have gotten. It wasn't too well known. It struck me as an opportunity to get up there and, you know, get these leases. And I thought it was a good investment op-

portunity. Now, the nature of my business in the oil business has always been within the industry itself, so when this situation, I knew that this would take investors that were not professional oil people, and I've never raised any money. Well, I have a friend, whom I have known for many years, a guy by the name of Bill Garrett, who is an attorney down in Dallas, and he'd been by here on a vacation, and I'd chatted with him about it and he used to tell me that raising money outside the oil industry was not bad, not hard to do if you had a good proposition. So I looked at this thing and I called Bill Garrett, and I said, "Look. I've finally got a good thing here, and if you think you know where there're some investors that want to buy some Federal leases," and he said, "Well, I think so," he said "I've got some friends down here that we've represented, my firm has represented," I don't think he was actually their attorney. But the firm was, a firm called Kilgore and Kilgore. And he said, "Why don't you come on down, and I'll introduce you to them." So, he was good enough, he lives out by the airport, to just have me to dinner at his house one evening and he introduced me to two fellows—one of whom was—name escapes me, but he was with the firm of Bache & Company, and the other was a fellow by the name of Mailloux, whom I refer to as Moose, that's his nickname, and was with an outfit called Transwestern Investment Company. So I explained the thing to him, and I said, "Look, here is an opportunity for people to buy these leases. Now they don't know, or assume they don't know how to fill out Federal oil and gas lease forms, I've had this whole program researched, I had that done by a local attorney, whom you've met. Jim Holmberg did that, he looked at the thing and told us what the situation was, and told us how to fill out lease forms and so forth, and I got hold of a fellow named Bob Burnside, who had done a lot of work on the area. Used to come from the Service, from the Geological Survey, and he worked up the areas, and he thought it was real good." So I said, "Look, here's the situation. We can't find investors, you find them.

That's your business, and we'll do our end of the business. Our end of the business is finding the good tracts, and filing them properly, because a lot of times as you probably know, people goof up on, they don't send in the right number of forms, or they don't fix 'em up properly. So he said, well, he'd go out and he'd see about it. What was in it for him. And I said, well what we would like to do is have an understanding that we can sell these leases for these people, if they win the leases. And, we'd like to share the profits, share in the profits of it, after they get their money back. And he said fine, and I said, well, you drive any kind of a deal you can with these people and then we'll just take half of what you get out of it in exchange for our work. So then it got around to what kind of a deal he'd drive with them. Well, it was sort of hard to tell at that time. We knew all the legal limitations on the situation, which were that you could only file 100,000 acres, and which turned out to be 39 tracts in this instance, and that you had to have a sealed envelope, and a bunch of things like that, and you had to put a check in with each one. Well, we had initially started it, we did not have available the maps, so we didn't know how big the tracts were—2560 acres seemed to be the standard tract, and that would be $1290, but we figured it would be $1280 for the advance rental and $10 for the filing fee and we knew there were going to be irregularities in the leasing maps which we had not yet received, so we said to 'em, well, let's make it 1300 bucks, so that'll come within the 10%, I think Holmberg said that there's, the rentals have to be paid at least 90%, or something like that. So we just struck on $1300. So then he said well now, how many of these leases are they going to win. These people that we know, some of 'em have a lot of money, some of 'em don't. Quite likely a bunch of them will not have the $50,000, which is roughly the figure I think of 39 times 13. I'm not sure. It would be right at that, because 100,000 limitation at 50¢ an acre. So, he said they're going to want some assurance that we won't, you know they won't be spending all their $50,000. So I said, well, why don't

you figure up some sort of a thing, so that if they win more than one, why you'll take it over as insurance for them that they won't be spending too much money, if they want to do that. So he started out on that basis, and then it took a lot of time and we were in sort of a rush, we were running out of time for a project in the nature of this thing and this many people, so he had Garrett draw up an agreement. Now Garrett is not an experienced attorney in oil and gas matters, but he did some basic research in it and he found out that this was illegal, or apparently illegal, or possibly illegal and he didn't like the idea of them taking the second things, so they called me up and said what are we going to do about this. Garrett says that we ought to let them keep those other ones, and I said well hell yes let 'em keep 'em but what happens if they get too many. And he says well they're just going to have to take their chances. If they get too many, then they've bit off more than they can chew. But if you will take the filings up there and insure that there's a big density of filing prior to filing them, then we can give them the assurances that they probably won't win over two or three or four leases—any one person. The odds on it pretty hard to tell, and we didn't know what the filing density was, so for that reason, we let it go at that, where they could keep any one of them that they wanted—they could keep all of them that they won. And so I took the offers up to Fairbanks, and when I saw that the filing density was such that I thought our people would be protected against winning twenty offers or something by one person, why then I filed them. Now that's, does that answer the question?

Mr. Kennedy: Q. 10. I think you've answered the question about the addendum and why you attached it, too.

Mr. King: Well, I didn't attach that, that was—

Mr. Kennedy: Q. 11. Why it was attached, in the first place.

Mr. King: That was their idea.

Mr. Kennedy: Q. 12. Did you have a written agreement with Transwestern, Mr. King?

Mr. King: We started to have one, I would say initially that I took these guys on a personal recommendation of a friend of mine, but we had no written agreement when we enterd into the thing. After a while, after we had gotten the leases and everything, we tried to get—(Bell) The thing was this—we started to write up an agreement, and I think we wrote up one tentative one and sent it back there, but they never signed it. And we were on the—we were just operating on the strength of the fact that we had told these people that we had a better chance of selling the stuff than they did individually, particularly because of the fact that by that time, it had appeared that these blocks were largely continguous and, of course, that's the big problem, is to—there's strength in numbers and if you can block up a bunch of stuff, why it sells easier, and so we figured that they'd do better to sell with us. And, of course, then there was the consideration that Transwestern really had no binding agreement on the clients and so they could, they were therefore in no position to enter into a binding agreement with us. In other words, they had—they couldn't commit anything to us that was not committed to them by the clients—by their clients, you see.

Mr. Kennedy: Q. 13. And you would share with Transwestern of a 50-50 basis of any profits?

Mr. King: That's right, any profits that Transwestern could arrange with their people—with their clients—they had to give the clients part of the profits, and whatever they took out of it, whatever Transwestern managed to get from the clients, why we were to get half of it, was the understanding that we had with them on it.

Mr. Kennedy: Q. 14. Did you know any of the applicants Mr. King, personally?

Mr. King: I never knew any of them, that I can think of, prior to the filing. Now after the filing, they wanted us down to Dallas to—Transwestern wanted us to go down to Dallas and explain to some of these people what they had gotten. We had sent them down a map and a very brief geological report prior to the filing, but they wanted to

know why, and why they were in these certain places, and what—where the companies were, and what were the chances of selling it and so forth. So we went down there and I met at that time a few of them. I met Newman, I remember, and his wife. And I met a guy named Bowe and his wife, and I met a couple other people whose names escape me, but I'd say of all told of those people, I probably have met maybe eight of them, or something like that.

Mr. Kennedy: Q. 15. Did you receive the applications all signed in blank?

Mr. King: Yes, we did the clerical processing in this office. The stacks of applications came up here signed and witnessed and we filled in the descriptions of the land. And we put them in the envelopes too. We had a way of doing it, so that we could write the envelope—the description of the land had to be on the outside of the envelope for the drawing. So, we had a system of putting it in while we typed the application so that the description would appear on the outside of the envelope and then we checked them all for, you know, correctness and so forth and put their checks each in the individual envelope, and labeled it, and sealed it.

Mr. Kennedy: Q. 16. Who determined what consideration would be received for these?

Mr. King: Who determined what consideration?

Mr. Kennedy: Q. 17. In other words, what part did the applicant or lessee play in selling the lease?

Mr. King: Well, the applicant or lessee, he didn't know particularly anything about the oil business. I understand one of these people that we have here under specific discussion, Evelyn Robertson, I understand to be in the oil business, being the widow of a guy named Leroy Robertson. Apparently he was an oil man. And I think Bob Gerry down there was an oil man. But largely, we figured that we would sell these leases for them. They were their own leases, but we stood a better chance of selling them than they did—just like a real estate guy stands a better

chance of selling your house for you than you do. Some people are do-it-yourselfers.

Mr. Kennedy: Q. 18. In other words, you were designated as their agent, and they let you handle all of the details?

Mr. King: That's right. On the theory that I'm a professional oil man, and I know who would be the most likely source of these leases.

Mr. Kennedy: Q. 19. That same thing applied to the overriding royalty interests you reserve to determine what that should be?

Mr. King: That's true. My obligation, of course, as agent to those people was to get the best deal I could get, and we discussed that with them a little bit, as to whether or not they would prefer all cash or, well there's some times when you might sell leases for $3 an acre and 5% override, or $5 an acre and 3% override. We asked these people which way they wanted to go, in that case. Most of them, in fact universally, the reaction seemed to be that they wanted the maximum overriding royalty, because they felt that was the only place they'd really make any money. So, we conducted our negotiations to sell the leases with that in mind. We feel the same way about it. But then, of course, some companies would rather pay money and no overriding royalty. That's just part of the Federal lease game. I guess you know about that.

Mr. Kennedy: Q. 20. Who handled the distribution of the proceeds from the sale of the leases?

Mr. King: Well, the distribution of the proceeds was made by the purchaser. He paid Transwestern in some instances, and in some instances he paid us, and we transmitted to Transwestern their share and their clients share, and Transwestern distributed to the clients. In some cases the purchaser paid Transwestern and they felt in one case, I think it was with the Texas Company, they were under the impression that since the thing ran through Transwestern assignment-wise, that for their own protection, they wanted to pay Transwestern, because Transwestern

was their assignor, and they just like to have their financial paperwork reflect the payment to the assignor—to their own personal assignor, so they sent it to Transwestern and then Transwestern divyed it up.

Mr. Kennedy: Q. 21. Did you have options from any of the clients?

Mr. King: No, we never did have an option from any of them. That is a written option, nor for that matter actually an expressed option. It was just the fact that we had them convinced—until you went down to Dallas about a year ago—we had them convinced that we were the best people they knew for getting it sold.

Mr. Kennedy: Q. 22. In a lease, or more than one lease, I don't recall whether Leon Harris bought more than one lease, but anyway, did he make any agreement with Transwestern Investment Company at the time he bought the lease?

Mr. King: Well, now I don't know this Leon Harris. I've heard about him. As I recall that situation, some guy, I think it was one of the Bowes that sort of a family thing. I think there are a couple of Bowes in here. One of the Bowes, as I recall, got his lease and was unhappy with it, and so he was trying to get out from under it. Now under the terms of the Transwestern Agreement, they said why they would take out any unhappy person, I think in a period of ten days. A sort of a money back guarantee type thing if the person didn't like the deal. So, this guy hollered, or two or three of them hollered. I've forgotten their names now, because you see, all that I get is second-hand. My deal, of course, is with Transwestern and whatever they do beyond that I don't know an awful lot about, and it doesn't particularly concern me. They got hold of this guy Harris, who is a sort of a wealthy fellow, and he thought he'd take these other people out, in other words, these people were dissatisfied. I think he just gave them their money back and they made an assignment to him, and, then, in other words, he stood in their shoes, if you want to put it that way. And I had no part in that, and this

was not regarded as a sale or if it would have been regarded as a sale, why since it was at cost. There was no profit and there would be no share in it for us you see.

Mr. Kennedy: Q. 23. Mr. King, at the time I made my opening statement here, I don't believe I even established the fact that you were here. So, if you will state your name and address, and your capacity with the Cortez Oil Company, or any other events you want to establish at this time.

Mr. King: My name is John J. King, and my business address is 1700 Broadway, in Denver, Colorado, and my residence address is 27 Sunset Drive, in Englewood, Colorado. I am the President of Cortez Oil Company, which is an Oklahoma corporation, and we have our headquarters here in this office.

Mr. Kennedy: Q. 24. I think we've gotten that taken care of now. Did you feel, Mr. King, that you had—let's say a 58 or a 59 to 1 chance of obtaining control over a lease in the drawing in Fairbanks?

Mr. King: No, I wouldn't say that at all. I would say that the only time I come into anything, outside of a lot of work and expense on this, is when I am successful in selling a lease. That's where I earn my money and I have sold four of the five leases that we are here discussing. And, I have sold them to three different companies, and it's been effort and work to do that, but as far as controlling a lease, no. All I—my position is that by virtue of the fact that I spend most of my time on this area and know most of the people that are interested in it, that I'm in my modesty, perhaps dictates that I shouldn't say this, but I really think, and I think I have most of those people, or had them at one time convinced that I could do a better job of selling their leases for them than they could. That's my position, I wouldn't call that control, in any way.

Mr. Kennedy: Q. 25. Why were some of the leases assigned to Transwestern?

Mr. King: Well, because you see part of the profit was an overriding royalty. Now, as I say, I don't know an

awful lot about the Federal leasing business. As a matter of fact, subsequent to this time, I don't think I've filed over maybe a total of fifty applications for Federal lease, since that time, so I really don't know much about it, but I was advised this—that an overriding royalty in terms of less than 1% was never approved by the BLM unless production was encountered. Now, I view that as sloppy, or not sloppy necessarily, but insecure paperwork, put it that way, that's not the way I run by business in fee leases. So, I like it recognized and recorded, any overriding royalty, however small, rather than just thrown in a case file where it may fall out or something else. So, I was advised by my attorney, the way to handle that was to—since the Bureau would not approve an assignment of overriding royalty less than 1%, that they would approve assignments reserving an overriding royalty of less than 1%, then he said that the best proceedural method was to run it through a series of assignments in order that the Bureau, by approving the assignment, would thereby approve fractional overrides. That was the reason it was done that way. I don't know whether that—I don't mean to criticise the Bureau's handling of the records, but we have our problems, and we like a good tight file that lines it all out, see?

Mr. Kennedy: Q. 26. That would also cover why some of the leases were assigned to Cortez Oil Company?

Mr. King: None of them were assigned to Cortez.

Mr. Kennedy: Q. 27. I'd like to ask you further, I think you probably already explained that this addendum to the agreement was between the client and Transwestern, was in effect before the drawing, but I'd like to ask you that question again.

Mr. King: Well, I never saw the addendum until after this thing was all over. The discussion came up as to whether or not the absence of the—in other words, the protection that Transwestern had afforded their clients of not buying thirty leases or something, whether this did constitute a threat, although it was intended for the client's

benefit, whether or not it did constitute an illegal act, or we were just doing the best we could with the rules as we knew them. And so, they called me up and asked me about that, and I said yeah, I think that's all right if the clients will stand hitched for this addendum, and they said yeah, they would, and so we—I never saw the actual addendum, but it was my understanding that it was in effect at the time that I left Denver. When I left Denver to go up to Fairbanks with the offers, it was my understanding in talking with the Dallas folks, that the addendum was in effect, or that if a person won more than one lease it was their lease, and as a matter of fact I think—I have the record here someplace. Actually, they did win—there's one, two, three, four, five different people won more than one lease, and as a matter of fact, two of them were man and wife—some people named Newman—between them they got a total of 6. A fellow named Perry Wallace got two—a fellow named Lasiter got two, and a woman named Kay Simmons got two. And then they're their leases. Those were the only people that got more than one lease and it was sort of a statistical surprise to me—I might add—up there at Fairbanks to see that name Newman come up so often, because really the filing density certainly wouldn't justify that, but I guess it's sort of like you go out to Las Vegas and some guy rolls seven, you know, eight times in a row. It was a very odd situation, but they had that right, and they insisted on it, and have the leases to this day, except those ones that were sold.

Mr. Kennedy: Q. 28. You filed, I believe the Fairbanks Land Office gave us a number of about 2750 lease offers that you filed on the date we have discussed here in September, anyway, of 1958. So, you filed other lease offers at that time in addition to the Dallas group. Is that so?

Mr. King: That's true, I did.

Mr. Kennedy: Q. 29. Did Transwestern Investment Company enter into any of those?

Mr. King. No, they did not.

Mr. Kennedy: Q. 30. Could you tell me what your deal was with those people? Was it similar to the Transwestern deal?

Mr. King: I would say this—we basically had one client that represented a group of 15 investors and I—the purpose of this discussion, of course, is basically to establish the rights of my clients to these five offers that have not yet matured into leases, and I don't think that's in the record, and perhaps we should get it in now. It's 021494 by Evelyn R. Robertson, it's 021457 by Kay Miller, it's 021549 by Mr. Jack M. Newman Jr., it's 021765 by Mr. E. B. Heckle, and it's 021642 by Mr. W. C. Wells. And, of course, that's—these are the leases that—the offers that under attack by Duncan Miller's protest and this is my purpose in wanting to get the record straightened out, because I feel that our procedure was a proper one and a legal one under the specific terms that were set up for this drawing, and I think that my clients that I just named, or they might be called clients once removed, since basically they are clients of Transwestern, and my deal was with Transwestern, but I owe them an obligation to do what I can to get these particular leases issued. Particularly since four of the five have already been sold to three different oil companies and I haven't made a nickel on them, and won't until the leases issue. Because my interest accrues upon selling them. So, for that reason, I don't really feel that it's within the province of this discussion to discuss any other filings that I made in detail.

Mr. Kennedy: Q. 31. Mr. Mailloux mentioned a man by the name of Burnside. Can you tell me who Mr. Burnside is? And if he had any relationship to this deal with Transwestern.

Mr. King: Mr. Burnside is a geologist, who specialized in the north slope of Alaska, and is the guy that picked out the particular tracts on which we suggested that these people file and gave them a brief reason for filing them, but I think it went somewhat over their heads—the geo-

logical discussion. His other contribution, and perhaps his greater one, has been in the attempt to sell these leases. For example, he wrote the only definitive article on the area—which we got published in the Oil & Gas Journal, which is the leading trade publication, I believe in April of 1959. I think about the April 18th issue if I recall—he wrote a rather detailed article on it and is recognized as an authority on the north slope of Alaska, and actually has been quoted in the bibliography of a fellow named O. C. Baptist up at Laramie with the Bureau of Mines. Burnside has also done some consulting work for the Navy as to a planned evaluation program for their Umiat field in the area. And that's his contribution in terms of this particular deal. I really think it can be said, and in attempting to sell these leases we've seen perhaps thirty major oil companies, and I've seen their head geologists and exploration managers sit still and listen when Bob Burnside starts talking about the Artic Slope. That's what he is—he's a technical advisor on this particular program.

Mr. Kennedy: Q. 32. Do you have any other statement you would like to make, or anything you would like to add to this statement, Mr. King? I think we've about covered everything, but I thought there might be something that you would like to add—or if there is anything, I would appreciate your . . .

Mr. King: Well, there's nothing I can say—I mean we have attempted in retrospect as I say—I think I know the oil business pretty well, but I don't know very much about the Federal leasing business. I've hardly any experience in it at all, except in this one particular instance. It was a particular situation that was established by duly promulgated regulations in the Federal Register. I got a good enough evaluation, I thought, as to how to do this thing, and how to do it within the parameters established by these specific regulations, which I notice have since been changed by the Secretary of the Interior, so that his sort of a filing procedure is no longer done. We did the best we could to

adhere to the regulations. We feel that we did it within the regulations and whenever—and I'm not even sure that, for example, that addendum situation was necessary, but at the same time, since my attorneys, that is to say, cannot find any specific really iron-clad clearly understood rules on simultaneous filing procedures, there was nothing in this —this was a very unique situation, there's nothing in it that mentioned that. We tried to go by the applicable portions of 43CFR as interpretated by not only my attorney up here, but Transwestern's attorney down in Dallas. We feel that we did the thing properly and we feel that our clients are entitled to a lease, particularly since we sold them and we also feel that we understand from my discussions in Washington, both with yourself and several other people back there, your limitations in terms of an investigative staff, we think that it's been a quite considerable delay . . . after all, it was October that Miller filed his protest as far as I know—October of '58, two and a half years past there now. We would very much like to see, of course, these offers mature into leases. And, toward that end, I would ask, if possible, that you request the Director of the BLM to consider in the event that he elects to reject the Duncan Miller protest, to ask the Secretary to join in this rejection, in order to expedite the thing, because nothing's going to be done up there, and we're interested in seeing some wells drilled and so forth, and while there's still uncertainty as to titles—then there's not going to be any work done, because nobody wants to buy off Duncan Miller. If the Secretary will join the Director in the rejection of the Duncan Miller protest, it will then and then subsequently in the rejection of his offers, this will expedite the program. On the other hand, if it is the opinion of the Secretary to uphold Duncan Miller, as against our clients, I would request on behalf of our clients that even in this event the Director ask the Secretary to join in the rejection in order to shorten the time delay for us to get into court to protect the interest of our clients.

These are just requests that I wish you would forward to the Director as you see fit.

Mr. Kennedy: Q. 33. I will, let me say, that I am strictly in this thing from an investigative standpoint and that this tape recording—a transcription of this tape recording will be submitted to the Director for his consideration.

Mr. King: Fine.

Mr. Kennedy: Q. 34. And at this time I think we've covered everything, Mr. King, and I want to thank you for very fine statement, for your cooperation on behalf of the Associate Director, Mr. Hochmuth and myself.

Mr. King: I want to reciprocate those thanks, particularly for your getting out here so soon after I saw you in Washington. I really appreicate it, and I'm sure our clients do too.

Mr. Kennedy: Q. 35. It takes a little longer to do these things after you even get off the ground—it takes a little while to set 'em up, to obtain a tape recorder, and to get help and so forth. And sometimes it can't be done as fast as it should be, but we do the best we can.

Mr. King: Mighty fine.

Mr. Kennedy: Q. 36. Thank you.

Mr. King: Yes, sir.

NOTE: The above is a verbatim transcription of the interview of the undersigned by the BLM's Mr. Kennedy. It was made from the dictaphone belts in my custody. Approximately 3 weeks after the interview, I telephoned Mr. Kennedy and asked why he was dragging his feet on sending me a transcription from his recorder. He admitted that, upon his return to Washington, he discovered that his recorder had malfunctioned and that, accordingly, he had no record of the interview. I thereupon sent him a copy of this transcription, together with duplicate copies of the dictaphone belts. From this he had prepared a somewhat smoother—and in places less accurate—transcription which I subsequently corrected in ink and signed.

It should be noted that his interview was conducted at my request after having discussed the matter with the

BLM's Mr. Hochmuth in Washington, and that Mr. Hochmuth and Mr. Kennedy both claimed—and I understood—that its purpose was to substantiate the clients' rights to leases in answer to Duncan Miller's protest, rather than vice versa, as it was subsequently employed by the BLM.

Exhibit E-2

AFFIDAVIT OF JOHN J. KING

John J. King, being duly sworn, deposes and says:

1. That prior to July, 1958, he had been engaged exclusively in the oil business for a period of over five years, during which time he had filed something less than ten total offers for United States Oil and Gas Leases, none of which had been filed simultaneously with other offers.

2. That during July, 1958, he was advised by friends in the U.S. Navy that the Federal Government intended to open to leasing vast areas of public land in the vicinity of Naval Petroleum Reserve No. 4 in Northern Alaska, and that, as a consequence, he then commenced monitoring Gower's Federal Service to ascertain the date of such opening.

3. That in early August, 1958, he found in Gower's mention of the fact that such lands had been opened and that, as a consequence, he requested of Gower's and received therefrom, a true copy of the actual Notice of opening as published in the *Federal Register* on July 29, 1958, which, together with the therein quoted applicable regulations, he studied in great detail.

4. That, in studying the Notice and applicable regulations carefully (owing to his relative unfamiliarity with Federal leasing procedures), he enquired of at least five persons actively engaged professionally in Federal leasing, and of at least one person in the Denver Land Office of the BLM, as to conventional and permissable procedures in filing offers for other persons.

5. That, as a result of these enquiries, he was universally advised that it was common and acceptable practice for lease brokers filing offers for other persons to:

a. Accept as a fee either cash or overriding royalty or a share of the net profits.

b. Complete the land descriptions on signed blank copies of Form 4-1158.

c. Furnish their own checks for filing fees and advance rentals, subject to reimbursement by the clients.

d. File the offers in the proper land offce.

6. That, among other things, he specifically enquired as to whether or not any statements were required of a broker by the—to him—unclear wording of 43 CFR 192.42 (e)(4) and was universally advised in the negative, provided that the offer was signed by the offeror rather than by the broker. His attention was invited to 43 CFR 192.42 (g)(1)(iv.) and to paragraph (9)(d) of the General Instructions on the reverse of Form 4-1158, from which he drew the inescapable conclusion that such interpretation was correct.

7. That, among other things, he specifically enquired as to whether or not filed offers constituted chargeable acreage, and was universally advised in the affirmative.

8. That, further to his effort to abide by all applicable rules and regulations, on September 12, 1958, he telegraphed the Manager of the Fairbanks Land Office requesting authoritative definition of the deadline for filing simultaneous offers for the Gubik-Umiat drawing, and was advised, in reply dated September 15, 1958, that it was 3:00 pm September 29, 1958. Inasmuch as this did not agree with Affiant's interpretation of the regulation 43 CFR 101.20, he then, on September 15, 1958, telegraphed the Director, BLM, making the same request and was advised, in reply dated September 16, 1958, that the deadline was 10:00 am

September 29, 1958. This disagreement between officials of the BLM served to alert Affiant once again to the complexities of the situation, and caused him once again to review all of the applicable rules and regulations in order to insure that his activities would in no way be in conflict therewith.

9. That prior to his filing of Plaintiffs' offers, he discussed with Transwestern Investment Company, Inc., the ramifications of its agreement with its clients with regard to the possibility of paragraphs (5) and (7) thereof, (which were originally intended solely as protection for the clients that their indeterminate investment would not exceed their expected expenditures) being in conflict with the special regulation: "Each offeror may file only one offer for each separate leasing block.", and, as a consequence of such discussion, it was agreed to incorporate the "Addendum" in those agreements which had been signed in order to preclude any possible violation of any rules or regulations.

10. That he was in direct charge of and personally supervised the preparation and filing of the offers of the Plaintiffs in this action, and that all such offers were prepared and filed in strictest compliance with all applicable rules and regulations, general or special, as then interpreted by the BLM and by persons regularly doing business therewith.

11. That he understood at that time and still understands that profit means the amount by which the vendor's receipts from the sale of an item exceed the vendor's cost of the item sold, and that the opportunity of a person other than the vendor to share under certain circumstances in the profit arising out of such sale does not necessarily constitute nor imply on the part of such third party any ownership whatsoever in the item sold.

12. That, at the time of the filing and drawing of the offers of the Plaintiffs in this action he had no ownership whatsoever in said offers, and there was absolutely no

element of fraud or collusion in his relationships with Transwestern Investment Company, Inc., nor with the plaintiffs in this action.

13. That on October 1, 1958, upon being advised by the Manager of the Fairbanks Land Office of the manner in which the drawing was to be held, he advised said Manager that the procedure declared to be followed constituted a clear violation of 43 CFR 295.8 and objected thereto, to no avail.

14. That in May, 1959, in order to expedite the issuance of the as yet unissued leases of clients of Transwestern Investment Company, Inc., he initiated a series of efforts spanning almost two and one-half years consisting of at least one telephone call to the BLM, three letters to the BLM, one letter to the Secretary, two personal conferences between his Denver attorney and BLM officials in Washington, and four personal conferences between Affiant and BLM officials in Washington.

15. That as a result of these efforts, he was finally, at his own request, interrogated at some length by the BLM's Mr. Frank V. Kennedy as to the circumstances surrounding the filing of Plaintiffs' offers, on the assumption that the purpose of the interrogation was to develop sufficient factual material to refute Duncan Miller's previously registered allegations of fraud and collusion and thus justify the issuance of leases to the clients of Transwestern Investment Company, Inc.

16. That, upon receipt of a copy of the decision dated September 21, 1961, by the Legal Assistant, Division of Appeals, BLM, he registered with the Director, BLM, a protest, a true copy of which is attached hereto as Appendix "1".

17. That, upon receipt of a copy of the decision dated March 21, 1963, by the Solicitor, which decision, for the first time, accused Affiant of non-compliance with the provisions of 43 CFR 192.42(e)(4), he initiated his own in-

vestigation of this particular question and found, in the March, 1963, issue of "PETROGRAM", a trade journal to which he subscribed, a copy of the text of a Memorandum dated January 17, 1963, purported signed by James F. Doyle, which is supportive of Affiant's understandings arrived at long ago as outlined in paragraph (6) of this Affidavit. A trfue copy of the extract from "PETROGRAM" is attached hereto as Appendix "2". As a result of this information, Affiant initiated correspondence related thereto with Messrs. Doyle and Koegler of the BLM. This correspondence is conclusive that, under the established facts surrounding the entire circumstances of this case, there was clearly no violation of 43 CFR 192.42(e)(4) on the port of Affiant, of Transwestern Investment Company, Inc., or of the Plaintiffs, even as currently interpreted by the BLM in light of the *Bate* and *Gonsales* decisions, much less under the universally recognized interpretations current at the time of the filing. True copies of this correspondence are attached hereto as Appendices "3" through "10".

18. That, upon receipt of a copy of the decision dated March 21, 1963, by the Solicitor, which decision affirmed the Legal Assistant's decision of September 21, 1961, insofar as that decision held that Affiant and Transwestern Investment Company, Inc., were the "real parties in interest" in Plaintiffs' offers, Affiant carefully reviewed the "evidence" upon which the Deputy Solicitor affirms the Solicitor's decision to be based and found said decision to be not only not supported by, but contradicted by, the available data.

19. That, in further investigation of this allegation, Affiant found that lease Fairbanks 021178, covering Block 9—Twp. 2S—Rge. 1W, UPM, was issued effective May 1, 1959, to one Perry Wallace, Jr., a client of Transwestern Investment Company, Inc.; was effectively sold by said Wallace to Richfield Oil Corporation by his execution, on February 26, 1962, of an Operating Agreement granting

Richfield Oil Corporation the operating rights thereunder; that said sale was negotiated by said Wallace through his own efforts independently of Transwestern Investment Company, Inc., and of Affiant; and that Affiant neither shared in the profits arising from said sale or requested so to share. Affiant has further been assured by Messrs. Robert R. Foley and Melvin R. Mailloux, the sole owners and officers of Transwestern Investment Company, Inc., that neither they nor Transwestern Investment Company, Inc., shared in said profits or requested so to share. Affiant regards this series of facts as conclusive that neither he nor Transwestern Investment Company, Inc., were in any sense "real parties in interest" in said lease or the offer pursuant to which it issued.

20. That, upon receipt of a copy of Defendant's Motion For Summary Judgment in the instant case, he noticed that, in character with the previous unfounded conclusions of Defendant and his subordinates, Defendant has now introduced, for the first time, the further conclusion that the Plaintiffs herein all signed the eleven-paragraph Agreement with Transwestern Investment Company, Inc. (which Defendant feels so important as to warrant reproducing it twice in his pleadings) *prior* to the drawing. Upon notice of this new allegation, Affiant initiated his own investigation as to this particular. He found that one of the Plaintiffs herein (Melvin R. Mailloux) never signed any Agreement with Transwestern, and that Mr. Mailloux and the balance of the Plaintiffs are all uncertain at this time as to whether or not the balance of the Plaintiffs ever signed any Agreement with Transwestern, and, if they did, whether it was signed prior or subsequent to the drawing. Affiant was initially disposed to view this situation as possibly appearing to a Court as one of convenient loss of memory, but, upon further investigation of the circumstances concerning one W. C. Wells, (not a Plaintiff in this case but in another, one of the five clients of Transwestern whose offers have been rejected by the Defendant), Affiant discovered conclusive evidence that Mr. Well's

Agreement was definitely signed two and one-half months subsequent to the drawing. A copy of Mr. Well's letter of December 15, 1958, with Transwestern's reply of December 16, 1958, thereon is attached hereto as Appendix "11". In view of this discovery, Affiant concludes that a most definite possibility exists that the Plaintiffs, if they did sign any Agreement with Transwestern, did so *subsequent* to the drawing, rather than *prior* to the drawing as claimed by Defendant and as not supported in any way by the "evidence" upon which the Defendant claims to have relied.

21. Affiant states, finally, that his total efforts in this entire transaction, and the efforts of Transwestern Investment Company, Inc., were directed toward a most scrupulous observance of—and adherence to—all applicable rules, regulations, and laws, clear and unclear, in a bona fide effort to provide the Plaintiffs professional leasing services, and that Defendant's efforts have been characterized by an illconsidered special set of unique rules; by unsupportable and false conclusions as to the conduct of the Plaintiffs, of Transwestern, and of Affiant; by already admitted violation of his own clear regulations in face of objection timely raised by Affiant; and by declared intention to further violate his own clear regulations by the conduct of a new drawing unauthorized by rule, regulation, or law.

Further Affiant saith not.

JOHN J. KING

STATE OF COLORADO }
COUNTY OF DENVER } ss.

Subscribed and sworn to before me this 14th day of December, 1963.

JAMES S. HOLMBERG
Notary Public

(Seal)

My Commission Expires:

Sept. 19, 1967

CORTEZ OIL COMPANY
TULSA

October 30, 1961

CERTIFIED AIRMAIL (No. 844382)
RETURN RECEIPT REQUESTED

Honorable Karl S. Landstrom
Director, Bureau of Land Management
U. S. DEPARTMENT OF THE INTERIOR
Washington 25, D. C.

Dear Sir:

Pursuant to the provisions contained in the regulation 43 CFR 221.52, I write to raise objection to the action proposed to be taken in the third from last paragraph of the Decision, dated September 21, 1961, signed by a Dale E. Zimmerman, therein identified as a Legal Assistant in your Division of Appeals.

On July 29, 1958, there was published in the Federal Register a Notice of Availability of Lands for Non-Competitive Oil and Gas Leasing, dated July 24, 1958, signed by an Earl J. Thomas, therein identified as the Acting Director (F. R. Doc. 58-5809). Paragraph 6, of this Notice is quoted below:

> "All offers must be filed in the Land Office, Bureau of Land Management (P.O. Box 1050), Fairbanks, Alaska. *All* offers received in the above-noted Land Office from the date of publication hereof and until 10 a.m. of the 60th day thereafter, will be considered as having been simultaneously filed. The priorities of *all* conflicting offers will be determined in accordance with the procedure outlined in the regulation 43 CFR, 295.8 and the sealed envelopes referred to in the preceding paragraph will be returned unopened to the unsuccessful offerors." (Emphasis added.)

The regulation 43 CFR 295.8 is quoted below:

> 295.8 Processing of simultaneous applications. *All* applications, which term includes offers to lease, filed pursuant to the regulations in any part of this chapter will be ragarded as having been filed simultaneously within the meaning of this section where by reason of an order of restoration or opening, or a notice of the filing of a plat of survey or resurvey, they are filed in the manner and within the period of time for the filing of simultaneous applications provided for in such order or notice. When no order of restoration or notice of opening is involved, the applications will be treated as having been filed simultaneously if they are received by a land office (or, if there is no such office for the State, by the Washington Office of the Bureau of Land Management), over the counter at the same time, or are received in the same mail. Unless otherwise provided in a particular order, or regulation, applications which are filed simultaneously will be processed in accordance with the following rules:
>
> (a) *All* such applications received will be examined and appropriate action will be taken on those which do not conflict in whole or in part.
>
> (b) *All* such applications which conflict in whole or in part will be included in a drawing which, except as provided in paragraph (c) of this section will fix the order in which the applications will be processed.
>
> (c) *All* applications included in the drawing will be subject to any priority to which any particular applicant may be entitled on account of a preference right conferred by law or regulations. (Emphasis added.)

On October 1, 1958, at the introduction of the drawing of simultaneously filed offers, a Mr. Robert L. Jenks, then Manager of the Fairbanks Land Office, advised those

present that all conflicting offers had been segregated as to tracts; that the drawing would be restricted to the establishment of first, second, and third priorities only on each tract; and that the balance of the conflicting offers on each tract would be assigned no priority and simply returned to the offerors. At that time, the undersigned invited Mr. Jenk's attention to the fact that the proposed procedure was potentially a clear violation of the provisions of 43 CFR 295.8, and protested the same on the grounds that, in the event of disqualification of the offers drawn as priority first, second, and third, the remaining offerors would be denied the priority to which they were entitled under the applicable regulations and statutes. Mr. Jenks proceeded, nonetheless, in accordance with what he declared to be his "instructions from Washington", which instructions had never been published, and were unknown to all of the offerors until after the expiration of the simultaneous filing period.

As a result of the drawing, the below listed persons were awarded the priorities indicated on the tracts indicated:

TRACT	OFFEROR	PRIORITY	SERIAL
Block 6-1S-2E	W. C. Wells	FIRST	021642
do.	J. Walton Henderson	Second	Not yet assigned
do.	K. Miller	Third	Not yet assigned
Block 6-1S-3E	E. B. Heckel	FIRST	021765
do.	Jack Franklin	Second	Not yet assigned
do.	Pearl Loden	Third	Not yet assigned
Block 7-1S-5E	K. Miller	FIRST	021457
do.	R. L. Madden	Second	Not yet assigned
do.	Darlene R. Wallace	Third	Not yet assigned
Block 2-3S-3E	Evelyn R. Robertson	FIRST	021494
do.	Joseph T. Kent	Second	Not yet assigned
do.	J. Erwin	Third	Not yet assigned
Block 7-3N-19E	Jack M. Newman, Jr.	FIRST	021549
do.	Melvin R. Mailloux	Second	Not yet assigned
do.	Billy A. Dunnigan	Third	Not yet assigned

Subsequent to the simultaneous drawing, a Mr. Duncan Miller filed offers on the above-described tracts of land, as follows:

Tract	Offeror	Priority	Serial
Block 6-1S-2E	Duncan Miller	None	022142
Block 6-1S-3E	Duncan Miller	None	022198
Block 7-1S-5E	Duncan Miller	None	022140
Block 2-3S-3E	Duncan Miller	None	022141
Block 7-3N-19E	Duncan Miller	None	022139

Mr. Miller then protested the issuance of leases to those offerors above described as having been assigned first priority on the grounds that they, and those offerors above described as having been assigned second and third priorities, all had the same address. Mr. Miller's protest was dismissed by the Land Office Manager on May 29, 1959, and Mr. Miller then appealed from this Decision to your office, which conducted an investigation, the data resultant from which has been interpreted by Mr. Zimmerman in his above-referenced Decision as disqualifying those offerors above described as having been assigned first priority. It is my understanding that one or more of these persons has filed a Notice of Appeal from Mr. Zimmerman's Decision, and I presume that the Secretary of the Interior will review their appeals in due course. The protest herein contained is, accordingly, not concerned with those persons assigned first priorities.

Protest is hereby made against the action proposed to be taken in the third from last paragraph of Mr. Zimmerman's above referenced Decision, which says:

> "It appears, then, that since the conflicting offerors, and their alternates in the drawing held for the lands in question, are disqualified because of the collusive manner in which they filed their lease offers, Duncan Miller is the first qualified applicant for the lands. Accordingly, if leases are to be issued for the lands in question, they must be issued to the first qualified

applicant. Cf. *C. T. Hegwer et al.*, 62 I.D. 135 (sic) (1955). When this decision becomes final the case records will be remanded to the Manager, through the Bureau's office of the Operations Supervisor at Fairbanks, for the issuance of such leases to Mr. Miller, all alse being regular."

In your taking such action hereon as is deemed to be appropriate in the circumstances, I invite your attention to the fact that *all* persons who filed simultaneous offers on the lands in question are clearly entitled by regulations and statutes to priorities superior to Mr. Miller, and to a proper adjudication of their offers, together with the right of appeal in the event of adverse decisions. *Only the issuance of leases to offerors who were assigned a priority at the drawing will constitute effective compliance with the provisions of 43 CFR 295.8, as required by the above-referenced Notice dated July 24, 1958.* The proposed issuance of leases on these lands to Mr. Miller, absent specific decisions on *each* offer filed simultaneously, cannot possibly be construed as anything but a most flagrant volation of the statutory rights of *all* persons who filed simultaneous offers on the lands in question. In this connection I would most earnestly suggest your careful review of the recent Solicitor's Decision A-28688, *Henry S. Morgan* (8/30/61).

In his widely distributed Decision, your Mr. Zimmerman infers that the undersigned participated collusively and possibly fraudulently in the simultaneous drawing, and further accuses the undersigned of conspiracy. These are serious inferences and accusations, totally unsupported by any of the investigation data made available to me, and are made without my having been afforded the opportunity to appear before a Hearing Examiner or to present sworn testimony in defense of my reputation. Despite the libelous remarks Mr. Zimmerman has made about me in his ill-considered Decision, he has not named me as a party and I

am therefore denied the right of appeal to the Secretary of the Interior. The same is true of those offerors assigned second and third priorities, whose statutory rights Mr. Zimmerman has so carelessly overlooked.

The Mineral Leasing Act is entitled "An Act To Promote The Mining Of Oil And Gas On The Public Domain". You, among others, are charged with the responsibility of its administration. The undersigned is the record owner of leases covering 18,330 acres, or 35 percent of the 51,670 acres included within the proposed outline of the East Umiat Unit, which outline was tenatively approved as long ago as March 8, 1960, by the Acting Director, U. S. Geological Survey. One of the tracts here concerned, Block 6, Twp. 1 South, Rge. 2 East, UPM, lies within this proposed outline. Patently, no mining for oil and gas can be conducted therein until the title to the leases therein located have been clearly established.

It has taken your Bureau almost 3 years to carry this matter to its present level despite my persistant personal efforts to effect its expedition. It appears reasonable to me to assume that if you elect to conduct this matter in accordance with the clearly illegal recommendations, herein protested, of your Mr. Zimmerman, you will, as a consequence, be directly responsible for an inexcusable delay of at least another 3 years in the mining of oil and gas on this particular portion of the Public Domain.

Original signed

JOHN J. KING
John J. King

CO

cc: Hon. Stewart L. Udal, Secretary of the Interior
James S. Holmberg, Esq.
Edward W. Fisher, Esq.
Mr. Dale E. Zimmerman
Mr. Duncan Miller

PETROGRAM—March 1963

Questions and Answers for the Pros

Question:

I have heard that the BLM in Washington is preparing new regulations to clear up this "Agency" controversy stirred up by the *Bates Decision*. Have I heard correctly?

Answer:

Yes! The whole controversy started out of the New Mexico land office where a ridiculous requirement was made that if someone delivers typed applications or obtains filing fees and advance rental checks for a person, a statement of agency must be filed.

We discussed the whole incident in the February issue of *Petrogram* and reprinted a copy of the *Bates Decision*. Many of the filers decided to wait for the smoke to clear before filing a "Statement of Agent", and this was the best move and decision on their part. But how does the Headquarters in BLM feel about the whole thing? To clue you in, we have shown below a memorandum which should be a good guide for the fellow with a question mark in his head.

The memorandum from BLM in Washington was sent to the New Mexico BLM Director.

U. S. DEPARTMENT OF THE INTERIOR

To: SD, New Mexico January 17, 1963
Subject: Eugenia Bate

Your speedmessage of January 9 concerns Departmental Decision *Eugenia Bate*, A 28519 (December 28, 1962), and requests our comments on the effect such decision will have on the processing of oil and gas lease offers insofar as 43 CFR 192.42 (e) (4) requires separate statements from an agent or attorney in fact.

You state that the Bate decision "appears to make mandatory the denial of priority to any oil and gas lease offer with which *an agent took any action prior to filing of the offer* in the Land Office, unless statement defining the agency as required by 43 CFR 192.42 (e) (4) accompanies the offer." (Emphasis added.) *We do not agree with your interpretation.* The *Bate decision did not hold that any agency relationship exists within the scope of 43 CFR 192.42 (e) (4) merely because an act is performed on behalf of the offeror by another.* That decision holds that such an *agency relationship exists* when an agent *performs three separate steps* on behalf of the principal (offeror): (1) selects the land; (2) fills in the land description, and (3) files the offer. We quote paragraph 1, page 7, of the decision:

> "Without regard to the agreement, the procedure followed by the parties constituted Bell an agent of the offerors. Bell selected the land supplied for, filled in the description on a previously signed oil and gas lease offer and filed the offer. A person who has authority to perform these functions for another is an agent." (Citing *Hoffman and Morton Co.* v. *American Insurance Co.*, 181 N.E. 821 (Ill. 1962))

The decision appears to leave *unanswered the question* of whether or not an agency exists when something less than the above is performed on behalf of the offeror. Again quoting from the decision:

> "It is obvious that if Bell elected to act as an attorney-in-fact in making a filing, the regulation quoted earlier would be applicable and require the furnishing of the separate statements of interest. However, if he *elected to furnish a list of lands* to his clients and to *physically file an offer* executed by them the *regulation would not be applicable* unless it could be said that he was acting for them in the capacity of an attorney-in-fact or agent . . . . Nor did Bell simply furnish them with a list

> of lands available for filing and merely physically file an offer completed by them."

The inference is clear. Had Bell only done this, viz.; furnish an offeror with a list of available lands and "physically file an offer completed" by an offeror he would not have been considered an agent wtihin the contemplation of the cited regulatoin.

In your speedmessage, you presented several factual situations in which services may be performed by individuals on behalf of oil and gas lease offerors, and ask our opinion whether or not the statements required by 43 CFR 192.42 (e) (4) must be submitted in such situations. For the reasons set forth above, these situations do not fall within the scope of the *Bate* decision nor can an agency relationship be reasonably assumed therefrom. The acts performed for the benefit of the offeror appear to be more in the nature of services rendered for a fee, rather than the exercise of discretionary action by an agent which would be binding on the principal.

Prior to the Bate decision, it has apparently been a *common practice* of the land offices to *require* the separate *statements of the agent* and the offeror *only* when the offer *has been signed by the agent* or attorney in fact. In view of the Bate decision, *separate statements are necessary* when an agent *selects the lands, completes the offer form and files the offer*, even though the offeror has signed the form in his own behalf. *We do not believe we should go beyond the scope of the Bate decision and hold that anything less is an agency.*

We do not recommend that you send the proposed letter calling for additional showings in connection with the offers receiving first priority in the December simultaneous filings and which appeared to be typed on the same typewriter as other offers in the drawing. *It is our view that action rejecting an offer for noncompliance with the cited*

regulation should be taken only when there is positive and substantial evidence showing that an agency relationship existed, i.e., where the facts of the agency are clearly shown by the record. In the Bate case, the allegation and evidence of Bell's agency was obtained as the result of a protest filed by Mrs. Bate. The Bate decision does not require that inquiry be made in connection with the type of situations you have referred to. On the other hand, if the facts suggest collusion in the filing of the simultaneous offers, the matter should be delevoped in accordance with previously prescribed procedures.

We are currently preparing regulations which deal with and define the meaning and intent of "sole party in interest" and what constitutes "interests" in leases, as well as with the problem of collusive filings. In addition, we shall consider whether to amend 43 CFR 192.42 (e) (4) to limit its applicability to attorneys in fact and agents who actually sign an offer in behalf of a principal. There is a question of the necessity for continuing the requirement that separate statements be submitted when an agent or attorney in fact acts on "behalf of an offeror" since 43 CFR 192.42 (e) (3) (iii) requires the sole party in interest statement which would reveal whether the agent has an interest.

You should proceed to complete necessary processing of the December simultaneous filings.

Signed—James F. Doyle
Assistant Director

NEWS FLASH!

The BLM have put there Rule-Making-Machine to work on this subject. Check the Federal Register dated March 8, 1963, page 2283. There under Proposed Rule Making, you will note the following proposed changes to 192.43 a, b concerning sole party in interest and statement of interest and on collusive filings.

A sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is or shall be deemed to be a sole party in interest with respect to a lease in which any other party has any of the interests described in this section. The requirement of disclosure in an offer to lease of an offeror's or other parties' interest in a lease, if issued, is predicated on the departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease shall have an equal opportunity of success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease includes but is not limited to record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease is deemed to constitute an "interest" in such lease.

When any person, association, corporation, or other entity or business enterprise file an offer to lease for inclusion in a drawing, and an offer or offers to lease are filed for the same lands in the same drawing by any person or party acting for, in behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing held pursuant to 192.43 of this part, all such offers will be rejected. Similarly, where an agent or broker

files an offer to lease for the same lands in behalf of more than one offeror under an agreement that if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. In the event a lease is issued on the basis of any such agent or broker will also be rejected. In the event a lease is issued on the basis of any such offer, action will be initiated to cancel the lease, whether the pertinent information regarding it is obtained by or was available to the Government before or after the lease was issued.

Section 192.141 is supplemented by adding a new subparagraph (a) (4) thereto to read as follows:

192.141 Requirements for filing of transfers.

(a) * * * *

(4) Each instrument of transfer must describe the lands involved as required by 192.42a.

The proposed new sections define the meaning and intent of the phrase "sole party in interest" in a lease, and what constitutes "interests" in leases. They also deal with the problem of collusive filings of oil and gas lease offers to obtain a greater probability of success in the drawing to determine priorities or to obtain a defined "interest" in a lease. The new subparagraph would require that lands in lease assignments be described as in lease offers.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written commends, suggestions, or objections with respect to the

proposed amendments to the Bureau of Land Management, Washington 25, D. C., within 30 days of the date of publication of this notice in the *Federal Register*.

September 26, 1963

AIRMAIL

Hon. James F. Doyle, Assistant Director
Bureau of Land Management
U. S. Department of the Interior
Washington 25, D. C.

Dear Mr. Doyle:

I am advised that under date of January 17, 1963, yau addressed to the State Director, New Mexico, an Airmail Memorandum under file 6.03c:3100, referring to his speedmessage 4.00 dated January 9, 1963. concerning the *Eugenia Bate* Decision A-28519 of December 28, 1962.

Would you please be good enough to provide me a copy of the State Director's speedmessage and of your memorandum reply thereto.

Thanking you for your attention to this request, I remain

Yours most sincerely,

JOHN J. KING

October 30, 1963

AIRMAIL

Hon. James F. Doyle, Assistant Director
Bureau of Land Management
U. S. Department of the Interior
Washington 25, D. C.

Dear Mr. Doyle:

On September 26, 1963, I wrote you requesting a copy of your Airmail Memorandum of January 17, 1963 6.03c:3100,

to the State Director, New Mexico, concerned with the Eugenia *Bate* Decision A-28519.

Inasmuch as over a month has passed without my having received either an acknowledgement of or compliance with my request, I write once again to solicit your attention to it. If reimbursement of reproduction costs is involved please so advise me and the same will be promptly remitted.

Your most sincerely,

JOHN J. KING

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

(October 28, 1963)

Mr. John J. King
1700 Broadway
Denver, Colorado

Dear Mr. King:

We are unable to comply with your request for copies of the memoranda referred to in your letter of September 26. The speedmessage and memorandum to which you refer constitute internal exchange of staff comment and analysis which is of a general nature, and which may or may not have applicability to any given factual situation. As such, we regret that they are not available for public distribution. However, if you have any specific questions concerning the subject matter of the memoranda, we would be pleased to answer them for you.

Sincerely yours,

W. F. KOEGLER
Acting Assistant Director
Lands and Minerals

October 31, 1963

AIRMAIL

Mr. W. F. Koegler
Acting Assistant Director
Lands and Minerals
Bureau of Land Management
U. S. Department of the Interior
Washington 25, D. C.

Re: 3123.2(2) (6.03c)

Dear Mr. Koegler:

Thank you for your letter of October 28, 1963, received today, referring to my request of September 26, 1963, for a copy of a certain Memorandum from the Director to the State Director, New Mexico, relative to the Eugenia *Bate* Decision. It just happens that only yesterday I again wrote Mr. Doyle reiterating my previous request. Accordingly please disregard the latter letter.

Responsive to your kind offer to answer any specific questions I might have concerning the subject matter of the Memoranda, I would greatly appreciate your advising me as to what the Bureau considers to be the specific criteria of agency. That is to say, what elements must be present to require an agency statement?

My reading of the *Bate* Decision is that it could be so broadly interpreted, for example, as to require a statement in the event the offer was not actually physically filed by the offeror, or if it was not actually typed by the offeror. This situation, which would involve countless mailmen and stenographers, for example, is, I am sure, not intended.

Thanking you in advance for any clarification you may be able to provide, I remain

Yours most sincerely,

JOHN J. KING

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

(November 12, 1963)

Mr. John J. King
1700 Broadway
Denver, Colorado

Dear Mr. King:

This will reply to your letter of October 31 concerning departmental decision *Eugenia* Bate, A-28519 (December 28, 1962).

We do not agree with your statement that the *Bate* decision can be so broadly interpreted as to require that the separate statements defining an agency relationship must be furnished when an oil and gas lease offeror merely has someone physically file the offer for him; or when the offeror does not type the offer form himself. In other words, we do not believe that the actions of a stenographer in preparing lease offer forms, or of a messenger in filing the offer with the land office, come within the scope of the *Bate* decision.

The *Bate* decision clearly holds that an agency relationship within the meaning of 43 CFR 192.42(e)(4)(i) exists when an agent performs three separate steps on behalf of the principal (offeror): (1) selects the land; (2) fills in the land description, and (3) files the offer. The *Bate* decision does not specifically cover those situations where something less than the foregoing is performed on behalf of an offeror although it is readily apparent that by far the most imporportant function that was performed by the agent in the *Bate* case was his action in the offeror's behalf of selecting the lands to be included in the offer.

Undoubtedly you are aware of the proposed amendment of 43 CFR 192.42(e)(4)(i) published in the *Federal Register*

on October 10 which would limit the applicability of the regulations to those situations where an offer is signed by an attorney in fact or agent.

Sincerely yours,

JAMES F. DOYLE
Assistant Director
Lands and Minerals

November 16, 1963

AIRMAIL

Hon. James F. Doyle, Assistant Director
Bureau of Land Management
U. S. Department of the Interior
Washington 25, D. C.

Re: 3123.2(2)

Dear Mr. Doyle:

Thank you for your letter of November 12, 1963, in clarification of the *Bate* Decision. There is only one more point on which I would request further clarification, and that is the criterion first listed in your letter under reply: "selects the land." Assume A recommends to B that B file an offer on a specific tract of land. B agrees, gives A five signed blank copies of Form 4-1158, and hires A to complete them and file them on the agreed tract of land. In your view, has A or B selected the land? That is to say, is A the agent of B within the current meaning of 43 CFR 192.42 (e)(4)(i)?

I am aware of the proposed rulemaking to amend 43 CFR 192.42 (e)(4)(i) and have already submitted my comments thereon. From the various discussions here in Denver during the recent RMOGA meeting I am left with the impression that there is considerable industry opposition to

some of the associated proposed changes, although I heard none to this specific change.

Thanking you again for your clarification, I remain

Yours most sincerely,

JOHN J. KING

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D. C.

(December 2, 1963)

Mr. John J. King
1700 Broadway
Denver, Colorado

Dear Mr. King:

Your letter of November 16 is in further reference to departmental decision *Eugenia Bate*, A-28519 (December 28, 1962).

We are confident you will recognize that we are unable to give you a direct answer to the hypothetical question you ask. Whether A is the agent of B within the meaning of 43 CFR 192.42(e)(4)(i), and under the ruling in the *Bate* case, would depend upon many unknown factors which cannot be anticipated in a hypothetical situation.

Our policy is not to give specific answers to general questions. To attempt to do so might prejudice an actual case of which we may have no present knowledge, and which may later come before us on appeal under the Departmental Rules of Practice.

Sincerely yours,

JAMES F. DOYLE
Assistant Director,
Lands and Minerals
Management

December 10, 1963

AIRMAIL

Hon. James F. Doyle, Assistant Director
Bureau of Land Management
U. S. Department of the Interior
Washington 25, D. C.

Re: 3123.2(2) (6.03c)

Dear Mr. Doyle:

Thank you for your letter of December 2, 1963, wherein you decline to answer the question I posed regarding your interpretation of the terminology "selected" under the ruling in the *Bate* case. I am of the opinion that the question was clear and direct and entitled to a clear and direct answer. Nonetheless, I certainly understand that you cannot devote all of your time to leading individual citizens through the labyrinthine ways of the Bureau's regulations, and I want you to know that I sincerely appreciate the consideratoin you have already shown me.

I would ask, in turn, that you recognize the problems facing persons such as myself in their efforts to deal in good faith with the Bureau whilst denied clear definitions of its more hazy regulations. I cannot avoid the firm conviction that the work load of administrative appeals would be vastly reduced were the regulations more precisely drafted and more clearly interpreted.

On the authority of your letter of November 12, 1963, I must conclude that the provisions of 43 CFR 192.42(e)(4)(i) do not apply when the offeror himself selects the lands to be described in his offer.

Thanking you once again for your patience and cooperation in this matter, I remain

Yours most sincerely,

JOHN J. KING

CY WELLS
3206 STEWART DRIVE
WACO, TEXAS
PLAZA 4-7698

15 December, 1958

Mr. Melvin Mailloux
Transwestern Investment Company, Inc.
Dallas, Texas

Dear Mel:

Your letter of the 4th with the various papers on the Alaska oil leases were received and placed in the action file pending my return from Arkansas. Sorry to have delayed but this morning is my first shot at my desk since then.

Everything you sent seems to be in order but thought I would check a couple of things in the "Agreement" before completing them.

My questions all have to do with section #7. The first is in line seven, ". . . plus (½) one-half of the cash profit" I am questioning the use of the word "profit". Should this not be "cash proceeds"? If not, let me have your version.

Also in section #7, please explain the last sentence which starts on line nine.

Going back to my first question, are you considering any costs to arrive at the "cash profit"? My understanding was that it would be the cash proceeds less the $1339.00 to arrive at the profit which would be divided equally.

Drop me a note on this and we'll be getting these papers off.

Sincerely,

CY WELLS

12/16/58

Dear Cy:

You have stated the correct understanding so well in the next to the last paragraph I am replying by footnoting your own letter. Yes we sell the acreage, you get the $1,339.00 back and thme balance is divided equally. We have no expenses, costs, or deductions of any nature that would reduce this cash to be dirived equally. The section #7 sentence refers to the client not sharing in the profit of additional leases if he won more than one. We later amended this contract to allow the clients to keep and derive profit from all leases won and in fact we had several who won more than one and kept them all subject to the terms of the initial lease drawn. It was not necessary to amend yours for you were a one time winner. I talked with John King today and prospects for selling the acreage soon look bright indeed. Rest assured that I will call you on any thing definite.

MELVIN R. MAILLOUX

Exhibit F-1

AFFIDAVIT OF JAMES S. HOLMBERG

The undersigned, James S. Holmberg, being first duly sworn, upon his oath deposes and says:

1. That on May 6, 1963, and June 5, 1963, he wrote to the Solicitor, Department of the Interior, requesting copies of all statements and related data which resulted from the Interior Department's investigation conducted in connection with the proceedings in Evelyn R. Robertson, et al, A-29251 (March 21, 1963).

2. That in reply to said letters, he received from Edward Weinberg, Deputy Solictor, a letter dated June 24, 1963,

which letter set forth the data upon which the said decision was based.

3. That a true copy of the said letter of June 24, 1963 is appended hereto as Appendix "1".

JAMES S. HOLMBERG
James S. Holmberg

STATE OF COLORADO CITY AND COUNTY OF DENVER } ss.

Subscribed and sworn to before me this 14th day of December, 1963.

MYRTLE J. ORIEL
Notary Public

My commisison expires: February 20, 1967.

(Seal)

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON 25, D. C.

June 24, 1963

Mr. James S. Holmberg
Attorney at Law
1700 Broadway
Denver 2, Colorado

Dear Mr. Holmberg:

I have your letters of May 6 and June 5, 1963, in which you ask for copies of all statements and related data resulting from the Department's investigation conducted in connection with the proceedings in *Evelyn Robertson, et al.*, A-29251 (March 21, 1963).

In your first letter you merely requested such documents and in your second you added that you were hampered in

preparing pleadings since you had no way of knowing the bases for the Department's decision. This was the first intimation we had that you are contemplating filing suit.

The decisions of the Bureau and the Department fully set out all the factors on which they relied. You apparently had access to some of the statements given to the Department's investigator because you filed with your statement of reasons on appeal to the Secretary copies of the statements given by Jack M. Newman, Jr., and E. B. Heckel, whom you represented. Mrs. Evelyn Robertson, another appellant, whom you also represented, was, I believe, also furnished a copy of her statement. Statements were also signed by Melvin R. Mailloux and John J. King.

Copies of these statements will be furnished to you upon receipt of payment at the rate of $1.00 per page. The statements have pages as follows: King 13, Mailloux 14, Heckel 4, Robertson 4, Newman 3.

Our decision was based on these statements, the agreements between the offerors and Transwestern Investment Company, Inc., and the oil and gas lease offer files.

I believe you will be interested to know, if you have not already been so advised, that Duncan Miller has filed an action against the Secretary seeking judicial review of the Department's decision. Its designation is *Duncan Miller* v. *Stewart L. Udall,* Secretary of the Interior, Civil Action No. 1066-63 in the United States District Court for the District of Columbia.

Sincerely yours,

EDWARD WEINBERG
Deputy Solicitor

Statement of Genuine Issues

Plaintiffs by their undersigned attorneys state pursuant to Rule 9(h) of the Rules of the United States District Court for the District of Columbia that there are the following genuine issues which can be resolved only after a full trial in the above-entitled action:*

1. Whether or not prior to the drawing here in issue it was the commonly known administrative practice of the Bureau of Land Management with respect to the interpretation and application of 43 C.F.R. 192.42(e)(4) to require a statement setting forth the terms of an agency agreement with respect to an offer or lease only if such offer were signed by the agent.

2. Whether or not plaintiffs and their agents Transwestern Investment Company, Inc. (hereinafter referred to as Transwestern) and John J. King (hereinafter referred to as King) acted in reliance upon the prior administrative interpretation and application of 43 C.F.R. 192.42(e)(4) by the Bureau of Land Management when in filing plaintiffs' offers in accordance with 43 C.F.R. 192.42, they did not also file a statement setting forth an agreement which might be denominated as an agency agreement.

3. Whether or not the current adminstrative interpretation and application of 43 C.F.R. 192.42(e)(4) by the Bureau of Land Management and the Department of the Interior is to require a statement setting forth the terms of an agency agreement with respect to an offer to lease where the offer is signed by the offeror only if the agent performs the act *inter alia* of selecting the land upon which the offer is submitted.

4. Whether or not each of the plaintiffs selected the lands upon which each of them bid within the meaning of

---

* Plaintiffs deny that the alleged facts as set forth in paragraph 4 of Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended, are material facts in this proceeding.

the current interpretation and application of 43 C.F.R. 192.42(e)(4) by the Bureau of Land Management and the Department of the Interior.

5. Whether or not plaintiff Mailloux signed the agreement as set forth in paragraph 3 of Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended.

6. Whether or not prior to the drawing referred to in paragraph 5 of Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended, any or all plaintiffs signed the agreement as set forth in paragraph 3 of said Statement.

7. Whether or not the written agreement as set forth in paragraph 3 of Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended, was intended, understood or implemented by the parties thereto to give Transwestern or King control over any leases which might be obtained as a result of the offers submitted in accordance therewith.

8. Whether or not the written agreement as set forth in paragraph 3 of Defendant's Statement of Material Facts Pursuant to Rule 9, As Amended, was intended, understood or implemented by the parties thereto to give to Transwestern and/or King any interest in plaintiffs' offers filed pursuant thereto or in the leases obtained as a result of such offers other than the opportunity terminable at will by the offeror to act as a non-exclusive agent for the offeror in negotiating the sale of any leases obtained.

9. Whether or not each of the plaintiffs was the real party in interest as to his offers in the drawing here in issue.

10. Whether or not each plaintiff in submitting his offers acted collusively with Transwestern and/or King to enhance his chances of prevailing in the drawing here in issue.

11. Whether or not each plaintiff acted individually and independently of each of the other plaintiffs when he

engaged the services of Transwestern and King for the performance of the functions of a lease broker.

J. Robert Fowler
Royall, Koegel & Rogers
By Robert D. Larsen
Attorneys for Plaintiffs

Affidavit in Support of Plaintiffs' Motion for Summary Judgment

Martin Ritvo, being duly sworn, deposes and says that he is an attorney in the Office of the Solicitor, Department of the Interior, and that the following documents, certified copies of which are attached, were filed in connection with the appeal to the Secretary in the case of *Evelyn R. Robertson et al., Duncan Miller*, A-29251 (March 21, 1963):

1. Appellants' Consolidated Statement of Reasons on Appeal filed for Appellants Evelyn R. Robertson, Jack M. Newman, Jr., W. C. Wells, E. B. Heckel.

2. Notice of Appeal and Statement of Reasons Therefor filed for Appellant R. L. Madden.

3. Notice of Appeal and Statement of Reasons for Appeal filed for Melvin R. Mailloux and Jack Franklin.

4. Letter dated June 28, 1963, from James S. Holmberg, Attorney, to Edward Weinberg, Deputy Solicitor, United States Department of the Interior.

Martin Ritvo

(Seal)

Subscribed and sworn to before me this 31st day of January 1964.

Bernice O. Hiett
Notary Public in and for District of Columbia

My commission expires February 29, 1968.

UNITED STATES
DEPARTMENT OF THE INTERIOR
WASHINGTON 25, D. C.

FAIRBANKS 021494
EVELYN R. ROBERTSON

FAIRBANKS 021549
JACK M. NEWMAN, JR.

FAIRBANKS 021642
W. C. WELLS

FAIRBANKS 021765
E. B. HECKEL

In the Matter of the Appeals of the Captioned Offerors From Decision of the Legal Assistant, Division of Appeals, Bureau of Land Management, Referencing Fairbanks 022139, 022140, 022141, 022142, 022198, and Rejecting the Captioned Offers

Appellants' Consolidated Statement of Reasons for Appeal

To The Secretary of the Interior:

The above named appellants submit this consolidated brief in support of their several appeals from a single decision of Dale E. Zimmerman, Legal Assistant, Division of Appeals, Bureau of Land Management, dated September 21, 1961, rejecting the captioned offers.

STATEMENT

By "Notice of Availability of Lands for Non-Competitive Oil and Gas Leasing", dated July 24, 1958, and published in the Federal Register July 29, 1958, approximately 4,000,000 acres of land on Alaska's Arctic Slope were opened to non-competitive leasing. The lands included in the subject offers were part of these lands. Each offer was required to be submitted in a sealed envelope bearing on its face the name and address of the offeror and the

description of the land applied for. The envelpoes of unsuccessful offerors were to be returned unopened. All offers were subject to the regulations contained in 43 CFR 192, and the notice specifically stated:

> "The priorities of *all* conflicting offers will be determined in accordance with the procedure outlined in the regulation 43 CFR 295.8" (Emphasis added).

Proceeding strictly in accordance with this notice, these four appellants filed their lease offers, and each was successful in the drawing held October 1 and 2, 1958. Some time after that date one Duncan Miller filed conflicting offers. He thereupon protested issuance of appellants' leases on grounds that their several lease offers bore the same post office address, and therefore, apparently, must be *prima facie* collusive. By the decision here appealed from the Legal Assistant has held that the appellants "are disqualified because of the colusive manner in which they filed their lease offers," and that "Duncan Miller is the first qualified applicant". This finding was made and the decision widely published,

> (a) *even though none of the parties was advised that such serious accusations were under consideration; and,*
>
> (b) *even though none of the parties was awarded a hearing or a chance to defend his rights and, indeed, his reputation.*

Also, the award to Miller of first qualified applicant status was made in shocking disregard of the rights of all other simultaneous offerors in the October 1958 drawing. Their offers were not even rejected, nor were they advised of the action taken against them, nor were they given an opportunity to appeal. Thus the deciding officer flouted all Departmental authority, and rendered his decision within a month following a firm and authoritative pronouncement

to the contrary: Solicitor's decision A-28688, *Henry S. Morgan*, (August 30, 1961).

The Legal Assistant not only violated basic consittutional principles—he ignored the clear regulations and decisions of the Department in which he is employed.

Now, for the first time, these appellants are granted a forum, if not a hearing.

The sworn statements of appellants are submitted herewith as Exhibits "A", "B", "C", and "D". Examination of these statements and of the whole record will clearly show that neither the letter nor the spirit of law nor regulation has been violated; and that the arrangement alleged to be collusive and improper was, in fact, a legal and acceptable agency agreement.

Argument

I.

The Appellants, and Not the Appellants' Agents, are and Were the Real Parties in Interest.

The decision here under appeal would appear on its face to turn on the question of whether appellants were the real parties in interest. It should be made clear at the outset that present regulations requiring real party in interest statements of offerors were not in effect when the rejected offers were filed. The rejections were not based upon any specific law or regulation. Appellants can only assume, therefore, that the rejections proceeded upon a contention that the real parties in interest had interests in other offers filed simultaneously for the same lands, thus creating an inherently unfair drawing. This contention invites analysis:

A. The Miller protest was based upon the claim that the appellants' post office address was the same as that of others who filed on the same land. This is an unrealistic

objection, since offerors regularly hire agents and attorneys to handle their lease filings, and no law, no regulation, no decision has questioned their right to do so.

B. The decision under appeal states:

> "It appears that each offeror also signed an agreement with the Transwestern Investment Co., Inc. whereby the Company was given complete control over any leases that might be obtained from the offers in the simultaneous drawing."

This statement is categorically denied by the appellants in their sworn statements. The referenced agreement constituted a freely revocable agency arrangement, whereby the agent was to use his best efforts to find a buyer willing to purchase and develop the lease, in return for which agent was entitled to a reasonable commission. Terms of the sale, and final approval of the sale, were left to the offeror.

Unless offerors were free to employ agents for assistance in filing and dealing with federal leases, the field would be left to the specialists, and the ordinary citizen would be precluded from the effective exercise of his rights.

Thus, in *Antonio DiRocco et al.*, A-26434, (July 11, 1952), cited in the decision under appeal, the Solicitor said:

> "It is recognized that an applicant may need the assistance of a geologist in determining what land to apply for, or he may desire other help in preparing or in prosecuting his application. *Such assistance can be obtained and the applicant nevertheless remain the real party in interest.*" (Emphasis added).

C. The decision under appeal states:

> "Each offeror also signed blank assignments to the Transwestern Investment Company, Inc."

Appellants have sworn in the accompanying affidavits that this statement is untrue. In no case was any blank assignment delivered to appellants' agent. The Legal Assistant gives no authority for this statement. Whether his decision was based upon it cannot be established from the decision. In any event, the delivery of a blank assignment to an agent, where the principal retains full power of decision, is a common and sensible procedure designed to avoid administrative inconvenience. In their affidavits, as well as in their earlier statements, the appellants have emphasized that the terms of any sale, and the final approval thereof, remained in their sole discretion.

D. The decision under appeal cites the authority of the *DiRocco* case, *supra*, to the effect that an agent under powers of attorney to exercise complete control over leases and receive the benefits therefrom, is the real party in interest. The *DiRocco* case is clearly distinguished from the instant cases because:

(1) It dealt with an irrevocable power of attorney, coupled with an interest. Here there is no allegation of any power of attorney, revocable or irrevocable.

(2) The *DiRocco* case dealt with a contract where the attorney-in-fact got all rights, benefits, and privileges incident to the offers, and was not obligated under the terms of the power-of-attorney to grant the original offerors even the nominal overriding royalty which he subsequently agreed to proffer. The case appeared to turn on that point, the Solicitor referring several times to "the lion's share." However, the Solicitor said in *DiRocco*:

> "The situation described here is quite unlike that where a bona fide applicant enlists the aid of another. . . ."

E. The decision under appeal cites *Clifton Carpenter*, A-22856 (January 29, 1941), "where a group of em-

ployees of a certain firm were induced to file oil and gas lease offers . . . at the behest of and for the benefit of the firm," Such procedure was not condoned. This case is not apt here because:

(1) Appellants are neither employees, nor relatives of employees, of any firm alleged to be a party in interest, nor were they even remotely associated therewith.

(2) Appellants' offers were not filed at the behest of, nor for the benefit of, any one other than appellants.

(3) *The funds paid by appellants to the Bureau of Land Management were appellants' own. They were neither advanced by anyone else, nor subject to any reimbursement.* In the *Carpenter* case, the funds were advanced by the firm held to be the real party in interest.

F. *The appellants' agents owned none of the incidents of ownership in the offers or the leases when issued.*

(1) They invested no money, advanced no funds, and had no obligation to pay rentals or any other leasehold expenses.

(2) They had no power to execute assignment, operating agreements, options, or other contracts relating to the leases.

(3) Their agency was freely terminable in the sole discretion of the true owners.

(4) Their agency would terminate automatically upon the death of the lease owner.

(5) The agency agreement in no way precluded the lease owner from disposing of the lease on his own.

All the agents were to receive in return for their extensive efforts on behalf of appellants was a commission

which, like most such commissions, was to be based upon a reasonable percentage of profit in the event agents succeeded in negotiating a sale or development contract acceptable to appellants. These agents, in fact, had less opportunities for profit than even the ordinary real estate agent, since they had no "exclusive" listing for a specified time.

II.

As Qualified Offerors Awarded Number 1 Priority, Appellants are Entitled to Oil and Gas Leases as a Matter of Law.

In the *Carpenter* case cited in the decision under appeal the Assistant Secretary said:

> "The Department is called upon to determine whether appellant's application should result in the issuance of a lease to him, or whether the circumstances surrounding its filing constitute a plan designed to afford *appellant* an unfair advantage over other applicants and thus deprive them of the right to an equal opportunity to be successful in the drawing to determine the applicant to whom a lease should be granted . . . the Department will not give its approval to a practice which even tends to deprive any claimant of the right to fair and impartial treatment in matters over which it has control," (Emphasis added).

It cannot possibly be said that these appellants had any unfair advantage. None had more than one offer on any one tract. Acreage limitations were strictly adhered to. Appellant's own money was advanced in each case. All provisions of 43 CFR 192 and of the special regulations were adhered to.

It has not been suggested that appellants are not qualified to hold federal oil and gas leases. As prior qualified offersors they are entitled to leases pursuant to

their offers, under Section 17 of the Mineral Leasing Act. Denial of this right could only proceed under a clear statute or valid regulation. No such authority is suggested in the decision under appeal.

Conclusion

Appellants submit that the decision of September 21, 1961 here appealed from is erroneous in both its premises and its conclusion, and must be reversed; and that effective compliance with the provisions of 43 CFR 295.8 as required by the Notice of July 24, 1958 *supra* demands that leases be issued to appellants.

Respectfully submitted,

James S. Holmberg
James S. Holmberg
650 Seventeenth Street
Denver 2, Colorado
Attorney for Appellants

Certified Mail (4) No. 844480

cc:

Certified Mail (4) No. 844481
Mr. Duncan Miller
Box 728
Boulder City, Nevada

EXHIBIT "A"

AFFIDAVIT

STATE OF TEXAS }
COUNTY OF DALLAS } ss.

Evelyn R. Robertson, being first duly sworn on oath, deposes and says as follows:

1. During September, 1958, she executed a number of Forms 4-1158, OFFER TO LEASE AND LEASE FOR OIL AND GAS, had her signatures witnessed, and delivered the same, together with a number of her personal checks, each in amount of $1,300.00, and each payable to the U.S. Bureau of Land Management, to a representative of Transwestern Investment Company, Inc., subject to the following understandings and agreements:

a. Transwestern Investment Company, Inc., was delegated to cause said Forms to be completed so as to constitute valid offers on no more than 39 predetermined tracts of land, the descriptions and locations of which were mutually agreed upon at that time. Additionally, Transwestern Investment Company, Inc., undertook to insure that not more than one of said offers was to be filed on any one tract of land, and to further insure that said offers would be timely filed with the Fairbanks Office of the U.S. Bureau of Land Management for participation in a simultaneous drawing in accordance with duly promulgated special regulations.

b. The funds represented by the said checks were exclusively the affiant's own, and any leases issued pursuant to any successful offers, even should she be successful on more than one offer, were to be exclusively her own.

c. Transwestern Investment Company, Inc., as her agent, was entitled to earn a share in any profits derived from a sale of any of said leases in the event

said sale was arranged by Transwestern Investment Company, Inc.

d. The agency agreement between affiant and Transwestern Investment Company, Inc., was terminable at will by either party, and affiant was free to sell any of said leases at any time to any purchaser that she might develop for her own account without obligation to share any profits with Transwestern Investment Company, Inc., or anyone else.

2. During October, 1958, one of affiant's offers so filed, covering Block 2, Township 3 South, Range 3 East, UPM, Alaska, was awarded first priority at the simultaneous drawing, and was assigned serial number Fairbanks 021494. Her check accompanying said offer was presented to her bank for payment and was duly paid out of her own funds.

3. Affiant had no interest, direct or indirect, in any other offer filed simultaneously on Block 2, Township 3 South, Range 3 East, UPM, Alaska.

4. Affiant was, at the time of said filing, and is now a native born citizen of the United States. Her interests, direct and indirect, in oil and gas leases and applications or offers therefor did not at that time nor do they now exceed 100,000 chargeable acres in Alaska, and she was at that time and is now over 21 years of age.

5. Approximately in April, 1959, subsequent to the payment of her check accompanying said offer, tired of awaiting the issuance of a lease pursuant thereto, affiant agreed verbally with Transwestern Investment Company, Inc., to sell her rights in said offer in exchange for the return to her of her investment therein.

6. Approximately in April, 1960, as a consequence of said verbal agreement, and subsequent thereto, upon the request of Transwestern Investment Company, Inc., affiant

executed and delivered an Assignment of said offer to Dakamont Exploration Corporation. At no time prior to the execution and delivery of this Assignment did she execute or deliver to Transwestern Investment Company, Inc., nor was she requested by Transwestern Investment Company, Inc., to execute or deliver, any blank Assignment of said offer.

7. Prior to the date of filing of said offer, her agreements and understandings with Transwestern Investment Company, Inc. were as above related despite anything to the contrary contained in any tentative agreement she may have signed with Transwestern Investment Company, Inc.

8. During the period from immediately prior to the filing of said offer to her verbal agreement mentioned in paragraph 5. above, said offer was owned by affiant exclusively, was subject to her exclusive control, and was not subject to any control by Transwestern Investment Company, Inc., or any other individual or company.

Further affiant saith not.

EVELYN R. ROBERTSON
Evelyn R. Robertson

Subscribed and sworn to before me this 20 day of October, 1961.

(SEAL)

HALIE ELLEN SULLIVAN
Notary Public

My commission expires June 1, 1963.

EXHIBIT "B"

AFFIDAVIT

STATE OF TEXAS }
COUNTY OF DALLAS } ss.

JACK M. NEWMAN, JR., being first duly sworn on oath, deposes and says that the following is a true transcript of the interrogation made by Mr. Frank V. Kennedy, a representative of the U. S. Bureau of Land Management, in Room 1337, Adolphus Hotel, Dallas, Texas, on June 5, 1961:

Kennedy: Will you please state your full name.
Newman: Jack M. Newman, Jr.

Kennedy: And your address, please.
Newman: 6155 Monticello, Dallas, Texas, P. O. Box 4763

Kennedy: What is your occupation?
Newman: Leather Goods manufacturer.

Kennedy: On September 29, 1958, John J. King of Denver, Colorado, filed 39 oil and gas lease offers in your behalf in the Fairbanks, Alaska, Land Office, Is that correct?
Newman: Yes.

Kennedy: Was this your first venture in oil and gas leasing on Federal Lands?
Newman: Yes.

Kennedy: How did you first become interested in filing in the Gubik Area?
Newman: Through friends—mutual riends of Mr. Mailloux and myself.

Kennedy: Did you sign an agreement with anyone concerning the filings?
Newman: Yes.

Kennedy: Do you have a copy of that agreement?
Newman: Yes.

Kennedy: Would you be willing to furnish me with a copy of the agreement?
Newman: Yes.

Kennedy: Did you have any understanding whatsoever other than the written agreement.
Newman: No.

Kennedy: Was this handwritten addendum (see coy of agreement) attached to the agreement when you signed it?
Newman: Yes.

Kennedy: When was the addendum first brought to your attention?
Newman: It was on the agreement when I signed it.

Kennedy: What part did you play in filling out the land description on the application?
Newman: I don't remember whether the form was completed or not—I believe it was.

Kennedy: Did you sign all the applications in blank, before the applications were completed?
Newman: I am not sure.

Kennedy: To whom did you deliver the applications.
Newman: Transwestern Investment Co.

Kennedy: If the form was not completed, do you know who did complete the applications?
Newman: No.

Kennedy: Why did you file on 39 tracts?
Newman: I believed they were most favorable for oil and gas leasing.

Kennedy: Did you furnish a check for $1300.00, payable to the Bureau of Land Management for each of the 39 applications signed by you, or 39 checks in all.
Newman: Yes.

Kennedy: Did you ever give anyone an option on any of the applications or leases.
Newman: No.

Kennedy: How many leases did you draw?
Newman: Six leases.

Kennedy: Who had exclusive control over any lease drawn by you?
Newman: Transwestern Investment Company was merely my Agent—I have exclusive control over my leases.

Kennedy: What part were you to play in any negotiations for sale of you leases?
Newman: I had the right to approve or disapprove any deal made for any of my leases.

Kennedy: Who determined the amount of overriding royalty?
Newman: I approved the deal made by Mr. King.

Kennedy: Have you assigned a lease to anyone?
Newman: Two.

Kennedy: What part did you play in these negotiations.
Newman: I approved the sales—the deal was perfectly satisfactory to me.

Kennedy: Is there anything you would like to add to this statement?
Newman: I am more than satisfied with the way Transwestern and Mr. John King have handled my leases. I would highly endorse them to anyone desiring an agent to handle their lease negotiations.

Affiant further declares that the following is a true copy of the Agreement between affiant and Transwestern referenced in the above interrogation:

AGREEMENT

THIS AGREEMENT, made this 16th day of September, 1958, by and between Jack M. Newman, Jr., hereinafter called "Client," and TRANSWESTERN INVESTMENT COMPANY, INC., a Delaware corporation, hereinafter called "Agent;"

WHEREAS, Client desires to acquire a Federal Oil and Gas Lease in the State of Alaska and desires the services of Agent to handle for Client his filing of Client's offers for such lease, and to handle the sale of such lease if acquired; and

WHEREAS, Agent is willing to furnish such services upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Agent and Client agree as follows:

1. Client will provide Agent in sextuplet thirty-nine (39) signed forms No. 4-1158 "Offer to Lease and Lease for Oil and Gas."

2. Client will deliver to Agent thirty-nine (39) signed checks on Client's bank account, each in the amount of Thirteen Hundred Dollars ($1300.00) and each drawn payable to the United States Bureau of Land Management.

3. Client will pay Agent a service charge of Thirty-Nine Dollars ($39.00), being One Dollar ($1.00) per offer filed.

4. Agent will complete the thirty-nine (39) offers and file the necessary number of copies of the same, together with the thirty-nine (39) checks to be delivered hereunder with the Fairbanks office of the Bureau of Land Management prior to September 29, 1958. Agent will provide the geological services required to select the lands to be covered by such filings in an area or areas considered geologically favorable for the exploration for oil and gas. In the event that Agents fails to perfect such filings, for any reason, Agent shall return the service charge paid by Client and

all of the checks delivered by Client and Agent shall have no further liability by reason of such failure to perfect the filings.

5. As soon as the results of the acceptance or rejection by the United States Bureau of Land Management of Client's offers are made known, Agent will deposit to Client's bank account such funds as may be required to cover all except one of Client's Thirteen Hundred Dollar ($1300.00) checks, which will be presented for payment as a result of the acceptance of one or more of Client's offers by the Bureau of Land Management.

6. Client agrees promptly to execute and deliver to Agent duly executed Assignments of all leases acquired by Client as a result of offers made in accordance with this Agreement, such Assignments to be made on the required number of copies of forms No. 4-1175, "Assignment Affecting Record Title to Oil and Gas Lease." The name of the Assignee shall be left blank in such Assignment, and the overriding royalty reservation shall also be left blank. Client hereby authorizes Agent to complete such Assignment by filling in the name of the Assignee and the percentage of the overriding royalty, if any, to be reserved. Client hereby authorizes Agent to deliver such Assignment for such consideration as Agent may deem advisable.

7. Agent shall use its best effort to sell upon the best available terms all leases obtained pursuant to offers made by Client under this Agreement. Upon a sale by Agent of the leases, if any, acquired by Client, Agent will promptly pay Client the sum of Thirteen Hundred Thirty-Nine Dollars ($1339.00), being Client's total investment, plus one-half (½) of the cash profit, if any, realized from the sale of that one of Client's leases which is sold at the highest price. The proceeds realized from the sale of Client's leases, if any, in excess of one, will be retained by Agent in consideration of the performance by Agent of its obligations under Paragraph 5 above.

8. Upon the successful sale by Agent of that one of Client's leases which is sold at the highest price, Client will promptly execute and deliver to Agent good and sufficient Assignment of one-half (½) of the overriding royalty, if any, reserved to Client in his Assignment of such lease, and a good and sufficient Assignment of all overriding royalties, if any, reserved to Client in his assignment of all other leases acquired hereunder. No consideration shall be paid for such Assignments other than that paid to Client by Agent under the terms of Paragraph 5 above.

9. If, within ten days after it is known which, if any, of Client's offers have been accepted, Client is dissatisfied with the transaction entered into pursuant to this Agreement, Agent will reimburse Client for all of his payments made hereunder in exchange for an Assignment of all rights of Client in oil and gas leases obtained by Client under this Agreement.

10. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns.

11. Nothing in this Agreement shall preclude Client from paying for ($1,300.00 to U. S. Bureau of Land Mgt.) any leases more than one the Client draws and keeping the same subject to the same terms and conditions as those described herein for the initial lease drawn.

TRANSWESTERN INVESTMENT
COMPANY, INC.
By /s/ MELVIN R. MAILLOUX
Vice President

/s/ JACK M. NEWMAN, JR.
Client

Affiant further declares that he did not comply with the terms of Paragraph 6 in the above set out Agreement, that he was not requested so to comply, and that he never executed any assignments of any of his leases, in blank or

otherwise, until such time as they had been sold, and he had personally approved the terms of the sale.

Further Affiant saith not.

JACK M. NEWMAN, JR.

Subscribed and sworn to before me this 30th day of October, 1961.

? ? ? ? SMITH
Notary Public

My commission expires June 1, 1962

EXHIBIT "C"

AFFIDAVIT

STATE OF OHIO }
COUNTY OF CLARK } ss.

W. C. Wells, being first duly sworn on oath, deposes and says as follows:

1. During September, 1958, he executed a number of Forms 4-1158, OFFER TO LEASE AND LEASE FOR OIL AND GAS, had his signatures witnessed, and delivered the same, together with a number of his personal checks, each in amount of $1,300.00, and each payable to the U.S. Bureau of Land Management, to a representative of Transwestern Investment Company, Inc., subject to the following understandings and agreements:

a. Transwestern Investment Company Inc., was delegated to cause said Forms to be completed so as to constitute valid offers on no more than 39 pre-determined tracts of land, the descriptions and locations of which were mutually agreed upon at that time. Additionally, Transwestern Investment Company, Inc., undertook to insure that not more than one of said offers was to be filed on any one tract of land, and to further insure that said offers would be timely filed

with the Fairbanks Office of the U.S. Bureau of Land Management for participation in a simultaneous drawing in accordance with duly promulgated special regulations.

b. The funds represented by the said checks were exclusively the affiant's own, and any leases issued pursuant to any successful offers, even should he be successful on more than one offer, were to be exclusively his own.

c. Transwestern Investment Company, Inc., as his agent, was entitled to earn a share in any profits derived from a sale of any of said leases in the event said sale was arranged by Transwestern Investment Company, Inc.

d. The agency agreement between affiant and Transwestern Investment Company, Inc., was terminable at will by either party, and affiant was free to sell any of said leases at any time to any purchaser that he might develop for his own account without obligation to share any profits with Transwestern Investment Company, Inc., or anyone else.

2. During October, 1958, one of affiant's offers so filed, covering Block 6, Township 1 South, Range 2 East, UPM, Alaska, was awarded first priority at the simultaneous drawing, and was assigned serial number Fairbanks 021642. His check accompanying said offer was presented to his bank for payment and was duly paid out of his own funds.

3. Affiant had no interest, direct or indirect, in any other offer filed simultaneosuly on Block 6, Township 1 South, Range 2 East, UPM, Alaska.

4. Affiant was, at the time of said filing, and is now a native born citizen of the United States. His interests, direct and indirect, in oil and gas leases and applications or offers therefor did not at that time nor do they now exceed

100,000 chargeable acres in Alaska, and he was at that time and is now over 21 years of age.

5. Approximately in April, 1960, affiant executed and delivered an Assignment of said offer to Dakamont Exploration Corporation. At no time prior to the execution and delivery of this Assignment did he execute or deliver to Transwestern Investment Company, Inc., nor was he requested by Transwestern Investment Company, Inc., to execute or deliver, any blank Assignment of said offer.

6. Prior to the date of filing of said offer, his agreements and understandings with Transwestern Investment Company, Inc. were as above related despite anything to the contrary contained in any tentative agreement he may have signed with Transwestern Investment Company, Inc.

7. During the period from immediately prior to the filing of said offer to the date of his execution and delivery of the Assignment mentioned in paragraph 5. above, said offer was owned by affiant exclusively, was subject to his exclusive control, and was not subject to any control by Transwestern Investment Company, Inc., or any other individual or company.

8. Affiant had the right to approve or disapprove any proposed sale of said offer arranged by Transwestern Investment Company, Inc., and specifically approved the sale thereof to Dakamont Exploration Corporation.

Further affiant saith not.

W. C. WELLS
W. C. Wells

Subscribed and sworn to before me this 18th day of October, 1961.

? ? ? ? ?
Notary Public

My commission expires ? ? ? ?.

EXHIBIT "D"

AFFIDAVIT

STATE OF TEXAS }
COUNTY OF DALLAS } ss.

E. B. HECKEL, being first duly sworn on oath, deposes and says that the following is a true transcript of the interrogation made by Mr. Frank V. Kennedy, a representative of the U. S. Bureau of Land Management, at 5110 Boca Raton, Dallas, Texas, on June 7, 1961:

Kennedy: Will you please state your full name.
Heckel: E. B. Heckel.

Kennedy: And your address, please.
Heckel: 5110 Boca Raton, Dallas, Texas.

Kennedy: What is your occupation?
Heckel: Air Line Pilot for American Airlines.

Kennedy: On September 29, 1958, John J. King of Denver, Colorado, filed 39 oil and gas lease offers in your behalf in the Fairbanks, Alaska, Land Office. Is that correct?
Heckel: Yes.

Kennedy: Was this your first venture in oil and gas leasing on Federal Lands?
Heckel: Yes.

Kennedy: How did you first become interested in filing in the Gubik Area?
Heckel: I had done some business with the Company (Transwestern Investment Company). I told them that I would be interested in an investment.

Kennedy: Did you sign an agreement with anyone concerning the filings?
Heckel: I believe I did.

Kennedy: Do you have a copy of that agreement?
Heckel: I may have, I have moved since it was signed. I may not have it.

Kennedy: Would you be willing to furnish me with a copy of the agreement?
Heckel: If I have it, I would be willing to let you have a copy.

Kennedy: Did you have any understanding whatsoever other than the written agreement.
Heckel: No.

Kennedy: Was this handwritten addendum (showing copy of agreement signed by H. David Lassiter) attached to the agreement when you signed it?
Heckel: I think it was.

Kennedy: When was the addendum first brought to your attention?
Heckel: I believe the addendum was on the agreement when I signed it.

Kennedy: What part did you play in filling out the land description on the application?
Heckel: The descriptions were filled in by Transwestern.

Kennedy: Did you sign all the applications in blank, before the applications were completed?
Heckel: I did not sign the applications in blank. I would not sign a blank paper.

Kennedy: To whom did you deliver the signed applications.
Heckel: To Transwestern. Mr. Foley, I believe.

Kennedy: Why did you file on 39 tracts?
Heckel: I was told that these tracts were favorable for oil and gas leasing.

Kennedy: Did you furnish a check for $1300.00, payable to the Bureau of Land Management for each of the 39 applications signed by you, or 39 checks in all.

Heckel: Yes.

Kennedy: Did you ever give anyone an option on any of the applications or leases.

Heckel: The only deal which was discussed by the Agent was that a prospective buyer had made an offer for the lease and it was satisfactory with me—but the actual lease was not given as it wasn't issued yet.

Kennedy: How many leases did you draw?

Heckel: One.

Kennedy: Who had exclusive control over any lease drawn by you?

Heckel: I do.

Kennedy: What part were you to play in any negotiations for sale of your leases?

Heckel: Only that I had the right to accept or reject any deal. Transwestern is my agent but I was the person who could finally approve or disapprove any deal.

Kennedy: Who determined the amount of overriding royalty?

Heckel: Same deal—I had the final say.

Kennedy: Have you assigned a lease to anyone?

Heckel: Not to my knowledge. The lease has not been issued yet.

Kennedy: Do you feel that you have exclusive control over your lease?

Heckel: I do. Of course, my agent would find a buyer—some one would have to do that, but I paid my own money and I have the final say in any deal that is made by my agent.

Kennedy: Is there anything you would like to add to this statement?

Heckel: Yes. Why is a matter like this tied up for over 2 years—holding my money at no interest—no information as to how long it will be tied up. Also, *who is Duncan Miller*? Who does he represent or does he exist. I as a U. S. Taxpayer would like to have Mr. Miller checked and see a report. As far as I am concerned my agent has done all he can to get this thing settled and the dealings have been on the up and up.

Affiant further declares that the following is a true copy of the Agreement between affiant and Transwestern referenced in the above interrogation:

AGREEMENT

THIS AGREEMENT, made this day of September, 1958, by and between E. B. Heckel, hereinafter called "Client", and TRANSWESTERN INVESTMENT COMPANY, INC., a Delaware corporation, hereinafter called "Agent;"

WHEREAS, Client desires to acquire a Federal Oil and Gas Lease in the State of Alaska and desires the services of Agent to handle for Client his filing of Client's offers for such lease, and to handle the sale of such lease if acquired; and

WHEREAS, Agent is willing to furnish such services upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Agent and Client agree as follows:

1. Client will provide Agent in sextuplet thirty-nine (39) signed forms No. 4-1158 "Offer to Lease and Lease for Oil and Gas."

2. Client will deliver to Agent thirty-nine (39) signed checks on Client's bank account, each in the amount of Thirteen Hundred Dollars ($1300.00) and each drawn payable to the United States Bureau of Land Management.

3. Client will pay Agent a service charge of Thirty-Nine Dollars ($39.00), being One Dollar ($1.00) per offer filed.

4. Agent will complete the thirty-nine (39) offers and file the necessary number of copies of the same, together with the thirty-nine (39) checks to be delivered hereunder with the Fairbanks office of the Bureau of Land Management prior to September 29, 1958, Agent will provide the geological services required to select the lands to be covered by such filings in an area or areas considered geologically favorable for the exploration for oil and gas. In the event that Agent fails to perfect such filings, for any reason, Agent shall return the service charge paid by Client and all of the checks delivered by Client and Agent shall have no further liability by reason of such failure to perfect the filings.

5. As soon as the results of the acceptance or rejection by the United States Bureau of Land Management of Client's offers are made known, Agent will deposit to Client's bank account such funds as may be required to cover all except one of Client's Thirteen Hundred Dollar ($1300.00) checks, which will be presented for payment as a result of the acceptance of one or more of client's offers by the Bureau of Land Management.

6. Client agrees promptly to execute and deliver to Agent duly executed Assignments of all leases acquired by Client as a result of offers made in accordance with this Agreement, such Assignments to be made on the required number of copies of forms No. 4-1175, "Assignment Affecting Record Title to Oil and Gas Lease". The name of the Assignee shall be left blank in such Assignment, and the overriding royalty reservation shall also be left blank. Client hereby authorizes Agent to complete such Assignment by filing in the name of the Assignee and the percentage of the overriding royalty, if any, to be reserved. Client hereby authorizes Agent to deliver such Assignment for such consideration as Agent may deem advisable.

7. Agent shall use its best effort to sell upon the best available terms all leases obtained pursuant to offers made by Client under this Agreement. Upon a sale by Agent of the leases, if any, acquired by Client, Agent will promptly pay Client the sum of Thirteen Hundred Thirty-Nine Dollars ($1339.00), being Client's total investment, plus one-half (½) of the cash profit, if any, realized from the sale of that one of Client's leases which is sold at the highest price. The proceeds realized from the sale of Client's leases, if any, in excess of one, will be retained by Agent in consideration of the performance by Agent of its obligations under Paragraph 5 above.

8. Upon the successful sale by Agent of that one of Client's leases which is sold at the highest price, Client will promptly execute and deliver to Agent good and sufficient Assignment of one-half (½) of the overriding royalty, if any, reserved to Client in his Assignment of such lease, and a good and sufficient Assignment of all overriding royalties, if any, reserved to Client in his assignment of all other leases acquired hereunder. No consideration shall be paid for such assignments other than that paid to Client by Agent under the Terms of Paragraph 5 above.

9. If, within ten days after it is known which, if any, of Client's offers have been accepted, Client is dissatisfied with the transaction entered into pursuant to this Agreement, Agent will reimburse Client for all of his payments made hereunder in exchange for an Assignment of all rights of Client in oil and gas leases obtained by Client under this Agreement.

10. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns.

11. Nothing in this Agreement shall preclude Client from paying for ($1,300.00 to U. S. Bureau of Land Mgt.) any leases more than one the Client draws and keeping the

same subject to the same terms and conditions as those described herein for the initial lease drawn.

TRANSWESTERN INVESTMENT
COMPANY, INC.

By /s/ MELVIN R. MAILLOUX
Vice President

/s/ E. B. HECKEL
Client

Affiant further declares that he did not comply with the terms of Paragraph 6 in the above set out Agreement, that he was not requested so to comply, and that he never executed any assignment of his leases, in blank or otherwise, until such time as his offer had been sold, at which time he executed the Form 4-1175, a copy of which is attached hereto as Exhibit "A", and that he personally approved the terms of the sale.

Further Affiant saith not.

E. B. HECKEL
E. B. Heckel

Subscribed and sworn to before me this 14th day of November, 1961.

JOHN L. ROACH
Notary Public in and for
Dallas County, Texas

My commission expires June 1, 1963.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial Number Fairbanks 021765

ASSIGNMENT AFFECTING RECORD TITLE TO OIL AND GAS LEASE

The undersigned, as owner of record title in the above-designated oil and gas lease, does hereby transfer and assign to: DAKAMONT EXPLORATION CORPORATION P. O. Box 1646, Denver, Colorado, the record title interest in and to such lease as specified below:

1. Lands affected by this assignment:

Twp. 15, Rge. 31, U.P.M.

Block Six

Containing 2,560 acreas

2. Interest of assignor in above-described lands 100%

3. Extent of interest conveyed to assignee 100%

4. Overriding royalty or production payments reserved herein to assignor (*State percentage only*) (*See Item 4 of Instructions*) Two Percent (2%)

5. Overriding royalties or production payments previously reserved (*State percentage only*) None

The undersigned agrees that the obligation to pay any overriding royalties or payments out of production of oil created herein, which, when added to overriding royalties or payments out of production previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent, shall be suspended when the average production of oil per well per day averaged on the monthly basis is 15 barrels or less.

It is hereby certified that the statements made herein are true, complete, and correct to the best of the undersigned's knowledge and belief.

Executed and witnessed this 1st day of April, 1960.

Witness:

R. FOLEY
(Witness signature)

(Address)

Dallas, Texas

MR. E. B. HECKEL
(Assignor's signature)
P.O. Box 1161
(Address)
Dallas, Texas

THE UNITED STATES OF AMERICA

By _____
(Signing Officer)

_____
(Title)

Assignment approved effective:

_____
(Date)

Title 18 USC, sec. 101 makes it a crime for any person knowingly and willfully to make to any Department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

UNITED STATES DEPARTMENT OF THE INTERIOR
WASHINGTON 25, D. C.

NOTICE OF APPEAL AND STATEMENT OF REASONS THEREFOR

Certified Airmail
Return Receipt Requested

To: The Director
Bureau of Land Management

Re: 6.05c
Fairbanks 022139
022140
022141
022142
022198

R. L. Madden hereby appeals from the Supplemental Decision dated March 16, 1962, of the Chief, Branch of Mineral Leasing Appeals, Division of Appeals, Bureau of Land Management relating to the captioned cases.

That decision does not purport to reject any offer of the appellant. However, the decision has been served upon the appellant by certified mail, and appellant appeals in order to avoid any risk of a subsequent rejection by the Bureau of Land Management on grounds that appellant's rights terminated because of his failure to appeal.

Under date of November 3, 1961, R. L. Madden protested the original decision of September 21, 1961, on grounds that that decision threatened issuance of an oil and gas lease to Duncan Miller covering Block 7, Township 1 South, Range 5 East, Umiat Principal Meridian. That protest has not been resolved. The offer of R. L. Madden covering said Block 7 is prior to that of Duncan Miller. If no oil and gas lease is to be issued pursuant to the number one offer, such lease must be granted to the appellant as the holder of second priority. Appellant's qualifications as a lessee have not been challenged. He has complied with all

pertinent regulations and has at no time relinquished any of his rights under the Mineral Leasing Act.

Departmental practice and decisions of the Secretary forbid that any action be taken to reject offers which are simultaneously filed for any tract until a lease is issued to the first qualified offeror. Solicitor's decision, *Henry S. Morgan*, A-28688, August 30, 1961. In the words of the Deputy Solicitor,

> "It is only ofter a lease is issued to the first qualified applicant that action should be taken to reject the other offers simultaneously filed for the same land."

Thus, the supplemental decision of March 16, 1962 could not constitute a rejection of appellant's offer even if it purported to do so.

Filing fee in the amount of $5.00 is submitted herewith. James S. Holmberg, a member of the Bar of the Supreme Court of Colorado, has heretofore entered his appearance as attorney for R. L. Madden in connection with the protest of November 3, 1961, and continues in that capacity.

Submitted this 5th day of April, 1962.

JAMES S. HOLMBERG
James S. Holmberg
1700 Broadway
Denver 2, Colorado
Attorney for Appellant

Certified Airmail—No. 844499
Return Receipt Requested

cc: Mr. Duncan Miller
P. O. Box 728
Boulder City, Nevada

UNITED STATES DEPARTMENT OF THE INTERIOR
WASHINGTON 25, D. C.

NOTICE OF APPEAL

To: The Director
Bureau of Land Management

On March 16, 1962, Mr. Dale E. Zimmerman, Chief, Branch of Mineral Leasing Appeals, Division of Appeals, rendered a Supplemental Decision with reference to the following cases:

Fairbanks 022139
Fairbanks 022140
Fairbanks 022141
Fairbanks 022142
Fairbanks 022198

Copies of this decision were served by certified mail upon these appellants, Mr. Melvin R. Mailloux, and Mr. Jack Franklin, and others identified as alternate drawees, although no serial number nor any land descriptions appear in the supplemental decision. Since the supplemental decision does not reject any offer of these appellants, appellants see no reason for the decision to have been served upon them. Nevertheless, this appeal is filed in order to guarantee that any rights which appellants may have as conflicting offerors shall remain intact.

Filing fee of $10.00 is enclosed, together with appellants' statement of reasons.

J. ROBERT FOWLER
J. Robert Fowler
Attorney at Law
Counsel for Appellants
1700 Broadway
Denver 2, Colorado

Certified Mail
Return Receipt Requested:

Mr. Duncan Miller
P. O. Box 728
Boulder City, Nevada

Statement of Reasons for Appeal of Melvin R. Mailloux and Jack Franklin from Decision of March 16, 1962

If the said decision of March 16, 1962, is intended to constitute a rejection of appellants' offers, it is ineffective for that purpose. It is well established in the Interior Department that no simultaneously filed offers may be rejected until a lease has been issued covering the conflicted lands. *Henry S. Morgan,* A-28688, August 30, 1961 (Gower's SO-1961-35).

Accusations of improper procedure or collusion contained in the decision of March 16, 1962, cannot properly be directed toward these appellants, because appellants had at no time been given a hearing or an opportunity to answer any charges whatsoever, nor have they been advised that any such allegations were even contemplated.

In any event, if appellants' offers are to be rejected, they are entitled to receive a clear and understandable decision to that effect, so that they can take the necessary steps to defend their positions.

JAMES S. HOLMBERG
ATTORNEY
1700 BROADWAY
DENVER 2, COLORADO

June 28, 1963

Mr. Edward Weinberg
Deputy Solicitor
United States Department of the Interior
Office of the Solicitor
Washington 25, D. C.

Re: A-29251
Evelyn R. Robertson, et al.

Dear Mr. Weinberg:

Thank you for your letter of June 24, 1963, replying to my request for copies of all statements and related data resulting from the Department's investigation conducted in connection with the subject case.

You are correct in assuming that we have copies of the statements made to the Department's agent by King, Mailloux, Heckel, Robertson and Newman, and copies of the agreements between these offerors and Transwestern Investment Company, Inc. While we do not have copies of the lease files, I assume that these files contain only the usual title documents.

The request was based upon the assumption that more extensive data were relied upon in arriving at the subject decision. Now that we have assurance that your decision was based only on the above-described documents, we are in a better position to prepare our case.

Very truly yours,

JAMES S. HOLMBERG
James S. Holmberg

Judgment

This case having come on for hearing on defendant's motion for summary judgment and the Court having considered the decision of defendant dated March 21, 1963, and the documents and affidavits filed by the parties as exhibits in support of and in opposition to the motion, including the documents and affidavits from the administrative record filed partly by defendant in support of his motion and partly by plaintiffs as exhibits in opposition to the motion, and having concluded that there is substantial evidence in the record to support defendant's decision and that that decision is correct in law; and it further appearing that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law,

IT IS THEREFORE ORDERED:

1. Defendant's motion for summary judgment is granted.

2. Judgment is entered in favor of defendant and against plaintiffs and the complaint is dismissed.

Dated this 14th day of April, 1964.

JOHN J. SIRICA
Judge
United States District Court

Notice of Appeal

Notice is hereby given this 9th day of June, 1964, that the plaintiffs herein, and each of them, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 14th day of April, 1964 in favor of the said Defendant against said Plaintiffs.

SHAW, PITTMAN, POTTS, TROWBRIDGE
& MADDEN
910 - 17th Street, N. W.
Washington, D. C.

By M. S. MADDEN
Murdaugh Stuart Madden
Attorney for Plaintiffs

*5

BRIEF FOR STEWART L. UDALL, SECRETARY OF THE INTERIOR, APPELLEE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,781

EVELYN R. ROBERTSON, JACK FRANKLIN, ROBERT L. MADDEN, MELVIN R. MAILLOUX, Appellants

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAMSEY CLARK,
Assistant Attorney General.

ROGER P. MARQUIS,
THOS. L. McKEVITT,
A. DONALD MILEUR,
Attorneys, Department of Justice,
Washington, D. C., 20530.

QUESTIONS PRESENTED

1. Whether the appellants, applicants for oil and gas leases on the public domain under the Mineral Leasing Act, were deprived of an opportunity to present their case to the Secretary of the Interior.

2. Whether the decision of the Secretary of the Interior that appellants' oil and gas lease offers earned them no priority is correct as a matter of law and is in accord with the facts of the case as presented to the Secretary.

I N D E X

	Page
Questions presented	i
Opinion below	1
Jurisdiction	2
Statement	3
Regulations involved	12
Summary of argument	15
Argument:	
The Secretary correctly disposed of this case after full opportunity to appellants to present any evidence to him that they desired	19
A. The Secretary's decision rests on an adequate factual basis	19
B. The hearing given appellants satisfies the due process requirements	23
Conclusion	30

CITATIONS

Cases:

Adams v. United States, 318 F.2d 861	23, 26
Anchor Line Limited v. Federal Maritime Comm., 112 U.S.App.D.C. 40, 299 F.2d 124	28
Asenap v. Huff, 114 U.S.App.D.C. 118, 312 F.2d 358	23
Boesche v. Udall, 373 U.S. 472	26
F.P.C. v. Colorado Interstate Gas Co., 348 U.S. 492	28
Ferry v. Udall, _____F.2d _____, (C.A. 9, 1964)	26
Foster v. Seaton, 106 U.S.App.D.C. 253, 271 F.2d 836	26
Homovich v. Chapman, 89 U.S.App.D.C. 150, 191 F.2d 761	26
LaRue v. Udall, 116 U.S.App.D.C. 396, 324 F.2d 428, cert. den., 376 U.S. 907	27
Marcello v. Ahrens, 212 F.2d 830	29
McGrath v. Potash, 91 U.S.App.D.C. 94, 199 F.2d 166	30
McKenna v. Seaton, 104 U.S.App.D.C. 50, 259 F.2d 780, cert. den., 358 U.S. 835	21
McNeil v. Seaton, 108 U.S.App.D.C. 296, 281 F.2d 931	27
Miller, Duncan v. Udall, C.A. D.C. No. 18,732	21
Morgan v. Udall, 113 U.S.App.D.C. 192, 306 F.2d 799, cert. den., 371 U.S. 941	22
National Lawyers Guild v. Brownell, 96 U.S.App.D.C. 252, 225 F.2d 552	29

Page

Cases cont'd:
Red Canyon Sheep Co. v. Ickes, 69 App.D.C. 27, 98 F.2d 308 ---------- 27
Safarik v. Udall, 113 U.S.App.D.C. 68, 304 F.2d 944 - 22
Thor-Westcliffe Development, Inc. v. Udall, 114 U.S.App.D.C. 252, 314 F.2d 257, cert. den., 373 U.S. 951 ---------- 22
United States v. L. A. Tucker Truck Lines, 344 U.S. 33 ---------- 28
Wells and Wells, Inc. v. United States, 269 F.2d 412- 23
Wong Yang Sung v. McGrath, 339 U.S. 33 ---------- 27
Wright v. Paine, 110 U.S.App.D.C. 100, 289 F.2d 766 - 22

Constitution, Statutes and Regulations:
United States Constitution, Fifth Amendment --------- 27
Administrative Procedure Act, 60 Stat. 237, as amended, 5 U.S.C. sec. 1001 ---------- 25
Section 10, 5 U.S.C. sec. 1009 ---------- 26
Sections 5, 6 and 7, 5 U.S.C. secs. 1004, 1005, 1006 ---------- 26
Section 17, Mineral Leasing Act of 1920, 41 Stat. 443, as amended, 30 U.S.C. sec. 226 ---------- 27
Taylor Grazing Act, 48 Stat. 1269, 43 U.S.C. sec. 315 27
43 C.F.R. sec. 192.42(e)(4) ---------- 21
43 C.F.R. sec. 221.31 (1962 Supp.) ---------- 25
43 C.F.R. sec. 221.36 (1962 Supp.) ---------- 25
43 C.F.R. sec. 221.99 (1962 Supp.) ---------- 25

Miscellaneous:
Clear Gravel Enterprises, Inc. 64 I.D. 210 ---------- 28
United States v. O'Leary, et al., 63 I.D. 341 ------- 28

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,781

EVELYN R. ROBERTSON, JACK FRANKLIN, ROBERT L. MADDEN, MELVIN R. MAILLOUX, Appellants

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR STEWART L. UDALL, SECRETARY OF THE INTERIOR, APPELLEE

OPINION BELOW

The district court did not write an opinion. The summary judgment in favor of the appellee Secretary of the Interior is found at page 176 of the Joint Appendix. The administrative opinion of the Secretary of the Interior is found at pages 29-40 of the Joint Appendix.

JURISDICTION

This is an appeal from the judgment of the district court granting appellee's motion for summary judgment. The judgment was entered on April 14, 1964 (JA 176). The notice of appeal was filed on June 9, 1964 (JA 177). Appellants allege the jurisdiction of the district court is founded on Section 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U.S.C. sec. 1009; the Declaratory Judgment Act, 28 U.S.C. sec. 2201; and 28 U.S.C. sec. 1361 [1/] (Br. 1-2). The jurisdiction of this Court rests on 28 U.S.C. sec. 1291.

1/ Appellee does not believe the Administrative Procedure Act nor the Declaratory Judgment Act, supra, are jurisdictional.

STATEMENT

This proceeding is to review the Secretary of the Interior's decision holding the appellants' oil and gas lease offers invalid because they did not disclose a concealed agent's interest and were therefore in violation of the Department's regulations and created an inherently unfair situation which gave the concealed agent 59 chances in the drawing for each leasing block instead of one.

On July 29, 1958, a notice was published in the Federal Register that approximately 4,000,000 acres of land in Alaska were available for noncompetitive oil and gas leasing under the Mineral Leasing Act (23 Fed.Reg. 5700-5701). Such lands were divided into leasing blocks of approximately 2,500 acres each. The notice declared that the leasing would be subject to, inter alia, the regulations in 43 C.F.R. Part 192, and the provisions of the notice. It was specified that "Each offeror may file only one offer for each separate leasing block." 23 Fed.Reg. 5701. The notice concluded with the provision that all offers received for the first 60 days after the publication of

the notice would be considered to have been simultaneously filed, and priorities would be determined by a drawing where there were conflicting offers (Ibid.).

The drawing was held on October 1, 1958, at which appellant Robertson drew no. 1 priority on one block, and the other three appellants drew a no. 2 priority on three other leasing blocks (JA 26-27, 118). Where conflicting offers were filed, only the number one priority and two alternates were drawn for each leasing block regardless of the number of offers filed (JA 38). Thereafter, and before any leases were issued, Duncan Miller filed conflicting lease offers on five blocks, including the four with which we are here concerned (JA 30). Miller then filed a protest charging that the three names drawn for each of the five leasing blocks used the same address, Post Office Box 1161, Dallas, Texas, and that this was indicative of collusion (JA 30).

The Fairbanks land office dismissed the protest because of the lack of evidence. On appeal to the Director of the Bureau of Land Management, Miller said that it was impossible for him to present additional evidence and asserted it was the duty of the Bureau to stop collusive filings (JA 30). Thereafter, the Bureau conducted an intensive investigation. As a

result of this investigation, it appeared that John J. King of Denver, Colorado, originated the idea of having a large number of people filing oil and gas lease offers in the Gubik area of Alaska (JA 22). Through Melvin R. Mailloux, one of the appellants here, who at the time was Vice-President of Transwestern Investment Company, Post Office Box 1161, Dallas, Texas, 59 persons were found who were willing to file 39 applications each on 39 specific leasing blocks in the Gubik area (JA 22, 78). Each of the offerors signed their lease offer forms in blank, which were later completed in Mr. King's office in Denver as to description of the lands and other details (JA 22, 35). King took these approximately 2,300 lease offers to Fairbanks, Alaska, where he filed them along with some others, filing a total of about 2,750 lease offers (JA 104-105). Offerors also signed an agreement with Transwestern Investment Company which provided for Transwestern deriving at least 50% of any profit made out of the sale of leases[2/] (JA 22-23). The

---

2/ After the case was in district court, appellant Mailloux denied that he "signed the agreement" as set forth above (JA 140). Mailloux was, of course, an officer in Transwestern. It was further denied in district court that all the plaintiffs signed the agreement "prior to the drawing" (Ibid.).

form of this agreement, which was drawn by Mr. Mailloux's lawyer, is as follows (JA 31-35, 75-76 et seq.):

> THIS AGREEMENT, made this ..... day of September, 1958, by and between ....., hereinafter called "Client," and TRANSWESTERN INVESTMENT COMPANY, INC., a Delaware corporation, hereinafter called "Agent;"
>
> WHEREAS, Client desires to acquire a Federal Oil and Gas Lease in the State of Alaska and desires the services of Agent to handle for Client his filing of Client's offers for such lease, and to handle the sale of such lease if acquired; and
>
> WHEREAS, Agent is willing to furnish such services upon the terms and conditions hereinafter set forth;
>
> NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Agent and Client agree as follows:
>
> 1. Client will provide Agent in sextuplet thirty-nine (39) signed forms No. 4-1158 "Offer to Lease and Lease for Oil and Gas."
>
> 2. Client will deliver to Agent thirty-nine (39) signed checks on Client's bank account, each in the amount of Thirteen Hundred Dollars ($1300.00) and each drawn payable to the United States Bureau of Land Management.
>
> 3. Client will pay Agent a service charge of Thirty-Nine Dollars ($39.00), being One Dollar ($1.00) per offer filed.

4. Agent will complete the thirty-nine (39) offers and file the necessary number of copies of the same, together with the thirty-nine (39) checks to be delivered hereunder with the Fairbanks office of the Bureau of Land Management prior to September 29, 1958. Agent will provide the geological services required to select the lands to be covered by such filings in an area or areas considered geologically favorable for the exploration for oil and gas. In the event that Agent fails to perfect such filings, for any reason, Agent shall return the service charge paid by Client and all of the checks delivered by Client and Agent shall have no further liability by reason of such failure to perfect the filings.

5. As soon as the results of the acceptance or rejection by the United States Bureau of Land Management of Client's offers are made known, Agent will deposit to Client's bank account such funds as may be required to cover all except one of Client's Thirteen Hundred Dollar ($1300.00) checks, which will be presented for payment as a result of the acceptance of one or more of Client's offers by the Bureau of Land Management.

6. Client agrees promptly to execute and deliver to Agent duly executed Assignments of all leases acquired by Client as a result of offers made in accordance with this Agreement, such Assignments to be made on the required number of copies of forms No. 4-1175, "Assignment Affecting Record Title to Oil and Gas Lease." The name of the Assignee shall be left blank in such Assignment, and the overriding royalty reservation shall also be left blank. Client hereby authorizes Agent to complete such Assignment by filling in the name of the Assignee and the percentage of the overriding royalty, if any, to be reserved. Client hereby authorizes Agent to deliver such Assignment for such consideration as Agent may deem advisable.

7. Agent shall use its best effort to sell upon the best available terms all leases obtained pursuant to offers made by Client under this Agreement. Upon a sale by Agent of the leases, if any, acquired by Client, Agent will promptly pay Client the sum of Thirteen Hundred Thirty-Nine Dollars ($1339.00), being Client's total investment, plus one-half (½) of the cash profit, if any, realized from the sale of that one of Client's leases which is sold at the highest price. The proceeds realized from the sale of Client's leases, if any, in excess of one, will be retained by Agent in consideration of the performance by Agent of its obligations under Paragraph 5 above.

8. Upon the successful sale by Agent of that one of Client's leases which is sold at the highest price, Client will promptly execute and deliver to Agent good and sufficient Assignment of one-half (½) of the overriding royalty, if any, reserved to Client in his Assignment of such lease, and a good and sufficient Assignment of all overriding royalties, if any, reserved to Client in his assignment of all other leases acquired hereunder. No consideration shall be paid for such Assignments other than that paid to Client by Agent under the terms of Paragraph 5 above.

9. If, within ten days after it is known which, if any, of Client's offers have been accepted, Client is dissatisfied with the transaction entered into pursuant to this Agreement, Agent will reimburse Client for all of his payments made hereunder in exchange for an Assignment of all rights of Client in oil and gas leases obtained by Client under this Agreement.

10. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

CLIENT

TRANSWESTERN INVESTMENT COMPANY, INC.

By.....
Vice President

AGENT

11. Nothing in this agreement shall preclude client from paying for ($1,300.00 to U.S. Bureau of Land Mgt.) any leases more than one the client draws and keeping the same subject to the same terms and conditions as those described herein for the initial lease drawn. 4/

4/ Paragraph 11 was not part of the printed agreement but added as a rider. It was added to most of the agreements after they were first signed.

Based on the foregoing evidence, the Bureau of Land Management concluded in its decision of March 16, 1962, that the appellants were disqualified because of the collusive manner in which the lease offers were submitted (JA 20-24).

The Bureau further concluded that Duncan Miller was apparently the first qualified applicant, and remanded the case for issuance of leases to Miller, "all else being regular" (JA 24).

An appeal was taken by the appellants to the Secretary (JA 28-40). The Secretary concluded that the regulation 43 C.F.R. sec. 192.42 was made specially applicable by the published notice. This regulation provided in pertinent part (43 C.F.R. sec. 192.42(e)(4)):

> * * * if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued * * * giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding * * *.

The Secretary pointed out that the agreement established that Transwestern was an agent of the offerors who was authorized to act on behalf of the offeror, e.g., under Section 4 of the

agreement Transwestern was authorized to complete and file the offers, and under Section 7 of the agreement it was empowered to sell the leases. The Secretary held that, in the absence of the statement required by the regulation, the offers earned no priority (JA 37). The Secretary also affirmed the Bureau's decision that Transwestern and King were real parties in interest in these offers and that they had created an inherently unfair situation which disqualified them from participating in the drawing. For these additional reasons, the offers in question did not earn a priority (Ibid.). The Secretary reversed the Bureau's conclusion that Miller was apparently the first qualified applicant (JA 37-40). Because of defects in the drawing procedure not here pertinent, the Secretary decided that the drawing must be held again (JA 40).

The appellants brought in district court one of the three suits now pending to review the Secretary's decision. One of these suits, Miller v. Udall, No. 18,732, is now before this Court. The third suit, Wells v. Udall, Civil Action No. A-37-63, is before the United States District Court for the District of Alaska. The district court in the present case granted the Secretary's motion for summary judgment (JA 43-50, 176). In so

doing, the district court held that the Secretary's decision is correct in law and that there is no genuine issue as to any material fact (JA 176). The appellants had filed with the district court a "Statement of Genuine Issues" (JA 139-141). This appeal followed.

REGULATIONS INVOLVED

23 Fed. Reg. 5700-5701 provides:

ALASKA

NOTICE OF AVAILABILITY OF LANDS FOR NON-COMPETITIVE OIL AND GAS LEASING

July 24, 1958.

Notice is hereby given that there have been filed in the Land Offices, Bureau of Land Management, Anchorage and Fairbanks, Alaska, and in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington 25, D. C., approved maps describing by leasing blocks approximately 4,000,000 acres of land in specified townships within the area described in section 1 of Public Land Order 1621, which are now available for noncompetitive oil and gas leasing. Such maps may be examined at those offices during the regular business hours. A portfolio containing an index map and leasing maps may be purchased from such offices for $1.50. This portfolio also contains a leasing map of the lands in the Gubik gas field which will be subject to competitive leasing only.

1. Approximately 4,000,000 acres of land will become subject to noncompetitive oil and gas leasing on the date of publication hereof. These lands are designated on said maps as separately numbered leasing blocks, in the specified townships, not exceeding 2,560 acres each.

2. All leasing will be subject to the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437); Public Land Order 1621, dated April 18, 1958; the regulations in 43 CFR, Part 192, and the provisions hereof.

3. All offers to lease must be submitted on Form 4-1158 and in accordance with the regutions 43 CFR 192.42. Each offeror may file only one offer for each separate leasing block.

* * * * *

43 C.F.R. sec. 192.42(e)(4) (1954 ed.) provides:

If the offer is signed by an attorney in fact or agent, or if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease, separate statements over the signatures of the attorney in fact or agent and the offeror stating whether or not there is any agreement or understanding between them, or with any other person, either verbal or written by which the attorney in fact or agent or such other person has received, or is to receive, any interest in the lease when issued, including royalty interest or interest in an operating agreement under the lease giving full details of the agreement or understanding, if it is a verbal one; the statement must be accompanied by a copy of any such written agreement or understanding; and if such an agreement or understanding exists, the statement of the attorney in fact or agent should set

forth the citizenship of the attorney in fact or the agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers therefor exceeds 46,080 chargeable acres in the same State, or exceeds 100,000 acres in the Territory of Alaska. This requirement does not apply in cases in which the attorney in fact or agent is a member of an unincorporated association (including a partnership) or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

43 C.F.R. sec. 221.31 (1962 Supp.) provides:

Right of appeal to the Secretary of the Interior. Any party adversely affected may appeal to the Secretary of the Interior from a final decision of the Director, whether such final decision is on an appeal or is an original decision, except from such a decision which, prior to promulgation, has been approved by the Secretary. No appeal, however, may be taken from a decision of the Director affirming a decision of a subordinate official of the Bureau in any case where the party adversely affected shall have failed to appeal from the decision of such official.

43 C.F.R. sec. 221.36 (1962 Supp.) provides:

Oral argument. The Secretary may in his discretion grant an opportunity for oral argument before him or a person designated by him.

43 C.F.R. sec. 221.99(d) (1962 Supp.) provides:

In any case, no decision on appeal or in a contest shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal or contest.

SUMMARY OF ARGUMENT

The Secretary of the Interior correctly disposed of this case after full opportunity to appellants to present any evidence to him that they desired.

A. The Secretary's decision rests on an adequate factual basis. These facts are that there was an agreement between Transwestern Investment Company or John J. King and 59 individuals, including the four appellants in this case, as set out in written form or affidavits signed by appellants appearing in this record. The regulation is unmistakably clear that if any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer to lease, this fact must be disclosed by a statement in writing. This is true whether the agreement is verbal or written and it must disclose whether the agent or any other person has received or is to receive any interest in the lease when issued. Appellants did not do this.

Insofar as this case involves the Secretary interpreting his own regulation and applying it to the facts of this case, it is open to him to choose any reasonable interpretation. The

court's inquiry ends when it determines whether or not the Secretary is unreasonable or plainly inconsistent with the regulation and statute. To dispose first of appellants' contention that there are factual issues in this case, the Court is referred to the "Statement of Genuine Issues" filed in the lower court by the appellants. It is submitted that there are no issues of material fact there. Thus, the district court correctly held that the case was properly disposed of by summary judgment. Since this is a suit to review proceedings before the Department of the Interior on the basis of the administrative record, a de novo trial of the issues would be improper in any event.

B. The hearing given appellants satisfies the due process requirements. Before demonstrating the lack of unfairness in the administrative process it should be emphasized that the appellants' hearing argument could not have been urged if they had conformed to the regulation. The crux of their argument is that an ordinary hearing is not enough--that it must comply with the procedural requirements of the Administrative

Procedure Act even though no statute requires a hearing. If the steps of the proceedings before the Department of the Interior are examined it will be seen that appellants were given full opportunity after adequate notice of the charges against them, and after opportunity to examine the pertinent files of the Department, to present any evidence or make any legal argument they desired in a de novo appeal to the Secretary. Appellants took advantage of at least part of these opportunities by taking an appeal and presenting fresh evidence.

It is against the factual background that the charge of lack of due process must be weighed. Insofar as Section 10 of the Administrative Procedure Act, the right of judicial review of administrative action, is concerned, its applicability is not here challenged. However, Sections 5, 6 and 7, the adjudications and procedural provisions, are not equally applicable. These provisions apply only to "every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing * * *." There is no such statute in this case.

The Supreme Court has pointed out that the exemption referred to cannot be read so broadly as to eliminate the need for a hearing which would be required by constitutional due process, even where there is no express statutory provision for a hearing. This has caused the Secretary of the Interior to determine that on contests involving the validity of mining claims, the Department must comply with the adjudications provisions of the Administrative Procedure Act. However, the Secretary subsequently held that this rule does not apply where the facts upon which the administrative decision rest are admitted, and the decision can be made as a matter of law. Further, this and other courts have recognized since the Supreme Court decision referred to above that an Administrative Procedure Act hearing is not the only means of satisfying the requirements of due process. The hearing procedure here clearly satisfies due process regardless of whether it was in accord with the technical requirements of the Administrative Procedure Act.

ARGUMENT

THE SECRETARY CORRECTLY DISPOSED OF THIS CASE AFTER FULL OPPORTUNITY TO APPELLANTS TO PRESENT ANY EVIDENCE TO HIM THAT THEY DESIRED

A. The Secretary's decision rests on an adequate factual basis. - In spite of appellants' assertions to the contrary, the basic facts on which the Secretary decided this case are not in dispute. These facts are that there was an agreement between Transwestern Investment Company or John J. King and 59 individuals, including the four appellants in this case, as set out in the written form composed by Transwestern's attorney, or in the affidavits signed by these appellants and others, appearing at various points in the record (JA 44-47, 156-159, 165-168, 54-57, 59-61, 62-64, 88-89, 159-161, 150-152). These agreements clearly show either Transwestern or King would have obtained a share of the profit from any lease won by any one of 59 applicants in the drawings on 39 separate tracts. Appellant Mailloux describes in detail in his statement to government investigators how the whole scheme originated and was executed (JA 66-87). There is no doubt on this record that it was King's geologist companion, Burnside, who selected the 39 tracts to be included in these offers (JA 70, 74, 78-79, 95-96, 105-106). That King

did in fact complete the approximately 2,300 applications, take them up to Alaska and file them is not disputed (JA 73, 93, 99, 104). There is also undisputed evidence in the record that King and Transwestern did in fact act as agent for the sale of some of these leases and profit thereby. (See JA 56, 83-84, 100-101, 102-103, 151-152, 155, 161.) The profit-sharing relationship between King and Transwestern is clear (JA 84, 93, 98).

However, lest the basic issue become confused with subsidiary questions, it is reiterated that the basic facts on which the decision of the Secretary of the Interior is based are the existence of the agreements, irrespective of when they might have been signed in written form, or whether they were executed at all in written form, whether they were revocable or not, or whether the successful offerors had a right of veto or not of any sale consummated by the agent. We have shown above that such agreements giving Transwestern and King the right to act as agents were in existence. The regulation of the Secretary as quoted above is unmistakably clear once this fact is granted. "* * *[I]f any attorney in fact or agent has been authorized to act on behalf of the offeror with respect to the offer or lease," this fact must be disclosed by a statement in

writing to the officials of the Department of the Interior. 43 C.F.R. sec. 192.42(e)(4). This is true whether the agreement is verbal or written (Ibid.). The statement must disclose whether the agent or "any other person" "has received, or is to receive, any interest in the lease when issued * * *" (Ibid.). Appellants made no attempt to comply with this regulation.

Insofar as this case involves the Secretary interpreting his own regulation and applying it to the facts of this case, the law is clear and has recently been briefed in full for this Court in Duncan Miller v. Udall, C.A. No. 18,732, now pending.[3/] It will not be repeated here. Suffice it to say that it is open to the Secretary to choose any reasonable interpretation, and the court's inquiry ends when it determines whether or not the Secretary is unreasonable or plainly inconsistent with the regulation and statute. McKenna v. Seaton, 104 U.S.App.D.C. 50,

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3/ A copy of this brief has been furnished appellants herein. Additional copies will be filed if this case is heard by a different bench than the Duncan Miller case.

54, 259 F.2d 780, 784 (1958), cert. den., 358 U.S. 835; Wright v. Paine, 110 U.S.App.D.C. 100, 102, 289 F.2d 766, 768 (1961); Safarik v. Udall, 113 U.S.App.D.C. 68, 74, 304 F.2d 944, 950 (1962); Morgan v. Udall, 113 U.S.App.D.C. 192, 194, 306 F.2d 799, 801 (1962), cert. den., 371 U.S. 941; Thor-Westcliffe Development, Inc. v. Udall, 114 U.S.App.D.C. 252, 314 F.2d 257 (1963), cert. den., 373 U.S. 951.

Appellants are principally arguing in this Court that they did not get what they consider to be a proper type of hearing, and they challenge certain allegedly factual matters. To dispose of the latter first, the Court is referred to the "Statement of Genuine Issues" which the appellants filed in the lower court (JA 139-141). Without discussing each alleged issue separately, it is submitted that there are no issues of material fact there. How the appropriate administrative officials interpreted the pertinent regulation, and whether the appellants acted in reliance on what they assumed such interpretation to be, is immaterial insofar as it is a fact issue. What the current regulation required, and whether appellants complied with it, are questions of law on the undisputed facts of the existence of the agreements. Whether appellant Mailloux signed the written

agreement is immaterial in view of the admitted fact that he had an agreement with King (JA 88-89). Likewise, it is immaterial when the appellants signed the written agreement. The correct interpretation of these written agreements, and whether Transwestern and King have "any interest" in the leases within the meaning of the regulation under such agreements, are all questions of law to be decided by the Secretary.

Thus, it will be seen that the district court correctly held in this case that the case was properly disposed of by summary judgment. Of course, since this is a suit to review the proceedings in the Department of the Interior on the basis of the administrative record, summary judgment is correct in any event, and a de novo trial of the issues would be improper. Asenap v. Huff, 114 U.S.App.D.C. 118, 312 F.2d 358 (1962); Adams v. United States, 318 F.2d 861, 867 (C.A. 9, 1963); Wells and Wells, Inc. v. United States, 269 F.2d 412, 415-416 (C.A. 8, 1959).

B. The hearing given appellants satisfies the due process requirements. - Appellants' contention that the hearing which they received is inadequate is equally without merit. The crux of this argument is found at page 11 of their brief:

> An ordinary hearing is not enough--it must comply with the requirements of the Administrative Procedure Act even though no statute requires such a hearing.

Before demonstrating the lack of unfairness in the administrative process, it should first be emphasized that appellants' hearing argument could not have been urged if they had conformed to the regulation. The regulation requires disclosure of terms of agency agreements, whether written or oral. If appellants had complied, there would have been no occasion to go elsewhere for factual proof on that question. We submit that, in fairness, appellants cannot create a need for a hearing by refusing to conform to the regulation. In any event, appellants' complaints lack merit.

Let us examine briefly the steps taken in the administrative proceeding. After Duncan Miller's protests alleging collusion were rejected by the manager of the Fairbanks, Alaska, Land Office, an appeal was taken to the Director of the Bureau of Land Management. After investigation, the Director determined that there was substance to Miller's allegations, and rejected the lease offers of appellants, whether as winners or alternates (JA 24). Copies of this decision, spelling out the fact upon which the Director acted, were served upon all the

appellants by certified mail (JA 25-27). At that point, appellants had an unlimited right of appeal to the Secretary of the Interior. 43 C.F.R. sec. 221.31 (1962 Supp.). This is a de novo proceeding in which appellants were free to make any argument, factual or legal, contrary to the decision of the Director. They had available to them all of the files of the Department of the Interior which the Secretary could consider on the appeal. 43 C.F.R. sec. 221.99 (1962 Supp.). They could present any evidence they desired. In fact, all four appellants filed appeals, and did present evidence (JA 142-174). Among the evidence presented were affidavits, transcripts of interviews, copies of the agreements between Transwestern and its clients and an assignment of one of the oil and gas leases involved in the appeal (Ibid.). The appellants could also have requested oral argument before the Secretary or a person designated by him, but apparently did not do so. 43 C.F.R. sec. 221.36 (1962 Supp.).

It is against the above factual background that the appellants' charge of lack of due process and/or failure to comply with the Administrative Procedure Act, 60 Stat. 237, as amended, 5 U.S.C. sec. 1001 et seq., is to be weighed. However,

one cannot validly make a broadside argument that the Administrative Procedure Act in its entirety is or is not applicable to any given case. Insofar as Section 10 is concerned, 5 U.S.C. sec. 1009, the right of judicial review of administrative action, its applicability is not here challenged. Homovich v. Chapman, 89 U.S.App.D.C. 150, 153, 191 F.2d 761, 764 (1951); Foster v. Seaton, 106 U.S.App.D.C. 253, 254-255, 271 F.2d 836, 837-838 (1959); Adams v. United States, 318 F.2d 861, 867 (C.A. 9, 1963). However, it must be pointed out that the right to judicial review of the Secretary of the Interior in cases such as these is recognized outside the Administrative Procedure Act, supra, Boesche v. Udall, 373 U.S. 472, 486 (1963).. Nor is there any substantial difference in scope of review outside or under the Administrative Procedure Act, supra. Ferry v. Udall, _____ F.2d ____, ____ (C.A. 9, 1964).

However, when one moves from the judicial review provision in Section 10 to the adjudications and procedural provisions of Sections 5, 6 and 7, 5 U.S.C. secs. 1004, 1005, 1006, the same considerations are not always controlling. The adjudications provisions of the Administrative Procedure Act expressly apply only to "every case of adjudication required by statute

to be determined on the record after opportunity for an agency hearing * * *." 5 U.S.C. sec. 1004; LaRue v. Udall, 116 U.S. 396, 400, 324 F.2d 428, 432 (1963), cert. den., 376 U.S. 907.[4/] There is no such statute in this case.

The Supreme Court has pointed out in Wong Yang Sung v. McGrath, 339 U.S. 33, 48-51 (1950), that the exemption mentioned above cannot be read so broadly as to eliminate the need for those hearings which would be required by the due process requirements of the Constitution, Amendment V, even where there

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4/ Appellants argue that the statutory preference to an oil and gas lease under Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 443, as amended, 30 U.S.C. sec. 226, is a property right, within the Fifth Amendment of the Constitution, providing that "No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *." There is no doubt that the first qualified applicant for a noncompetitive lease under the Mineral Leasing Act is entitled to bring a judicial action to vindicate his statutory preference where the Secretary erroneously leases to another. But this does not turn a statutory preference into a property right in the public domain within the meaning of the Fifth Amendment. Statutory preferences under the Taylor Grazing Act, 48 Stat. 1269, 43 U.S.C. secs. 315-315r, such as were involved in LaRue v. Udall, supra, are also subject to judicial protection. McNeil v. Seaton, 108 U.S.App.D.C. 296, 298, 281 F.2d 931, 933 (1960); Red Canyon Sheep Co. v. Ickes, 69 App.D.C. 27, 98 F.2d 308 (1938). Yet, as is plainly implied from this Court's holding in the LaRue case, they are not property rights within the meaning of the Due Process Clause.

is no express statutory provision for a hearing. This has caused the Secretary of the Interior to determine that in hearings on contests involving the validity of mining claims, the Department must comply with the adjudications provisions of the Administrative Procedure Act. United States v. O'Leary, et al., 63 I.D. 341, 345 (1956). However, the Secretary subsequently pointed out that the O'Leary case does not apply where the facts upon which the administrative decision rests are admitted, and the decision can be made as a matter of law. Clear Gravel Enterprises, Inc., 64 I.D. 210, 213 (1957). The record shows that appellants did not challenge the factual basis of the Secretary's decision in the proceeding before him (JA 142-174). This would make applicable the well-known rule that issues not raised in the administrative proceeding cannot be raised for the first time in the judicial review. United States v. L. A. Tucker Truck Lines, 344 U.S. 33 (1952); F.P.C. v. Colorado Interstate Gas Co., 348 U.S. 492, 500 (1955); Anchor Line Limited v. Federal Maritime Comm., 112 U.S.App.D.C. 40, 41, 299 F.2d 124, 125 (1962), and cases there cited. Of course, the type of hearings which are being discussed above are trial-type hearings where evidence is taken before a hearing

examiner. Even where there are no factual issues in dispute, it may be conceded that due process might require an adversary procedure whereby the opposing parties are allowed to present their views to the Secretary. There is no question that appellants have been afforded such an adversary type procedure in the present case.

This and other courts have recognized since Wong Yang Sung, supra, that "the Supreme Court did not there mean that an Administrative Procedure Act hearing is the only means of satisfying the requirements of due process." National Lawyers Guild v. Brownell, 96 U.S.App.D.C. 252, 257, 225 F.2d 552, 557 (1955); Marcello v. Ahrens, 212 F.2d 830, 837 (C.A. 5, 1954). In the latter case, the Fifth Circuit pointed out that a hearing "is not unfair merely because the rules of evidence and procedure applicable to judicial hearings are not adhered to. To render such a hearing unfair, the defects complained of must be such as lead to a denial of justice" (Ibid.). Perhaps the best proof that the procedural requirements of the Administrative Procedure Act, supra, are not the sole means of constitutional due process is that Congress itself after Wong Yang

Sung, supra, exempted the hearings there involved from the Administrative Procedure Act and this legislation was upheld by this Court. McGrath v. Potash, 91 U.S.App.D.C. 94, 95, 199 F.2d 166, 167 (1952). The hearing procedure provided by the Secretary in this case clearly satisfies due process requirements, regardless of whether it was in accord with the technical requirements of the Administrative Procedure Act.

CONCLUSION

The judgment of the district court upholding the decision of the Secretary of the Interior is correct and should be affirmed.

Respectfully submitted,

RAMSEY CLARK,
Assistant Attorney General.

ROGER P. MARQUIS,
THOS. L. McKEVITT,
A. DONALD MILEUR,
Attorneys, Department of Justice,
Washington, D. C., 20530.

OCTOBER 1964

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,781

EVELYN R. ROBERTSON, JACK FRANKLIN, ROBERT L. MADDEN, MELVIN R. MAILLOUX, *Appellants*

v.

STEWART L. UDALL, Secretary of the Interior, *Appellee*

Appeal from a Judgment of the United States District Court for the District of Columbia

APPELLANTS' REPLY BRIEF

SHAW, PITTMAN, POTTS, TROWBRIDGE & MADDEN
M. S. MADDEN
910-17th Street, N.W.
Washington, D. C.

HOLMBERG AND POULSON
JAMES S. HOLMBERG
1700 Broadway
Denver, Colorado

Attorneys for Appellants

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,781

EVELYN R. ROBERTSON, JACK FRANKLIN, ROBERT L. MADDEN, MELVIN R. MAILLOUX, *Appellants*

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STEWART L. UDALL, Secretary of the Interior, *Appellee*

Appeal from a Judgment of the United States District Court for the District of Columbia

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APPELLANTS' REPLY BRIEF

No Appellant Was Ever Afforded Any Opportunity to Present Evidence to the Secretary on the Basic Issue of This Case

The appellee has stated, on page 20 of his brief, that the basic issue is the Interior Department's regulation (43 CFR 192.42(e)(4) (1954)) with regard to agency statements accompanying oil and gas lease offers. He states further that "the Secretary correctly disposed of this case after full opportunity to appellants to present

any evidence to him that they desired". The fact is that *the very first suggestion that this agency regulation could be applied in this novel manner was contained in the Solicitor's decision of March 21, 1963* (JA 28)—*a final administrative decision no appellant had any opportunity to appeal or to contest.* The regulation had never previously been applicable except where the agent signed the offer on behalf of the offeror (JA 124). The only remedy available to any appellant following that decision was an action for judicial review in the United States District Court. Such an action was promptly brought and the appellants, both before the District Court and in the present appeal, have continuously sought an opportunity for a proper hearing on this basic issue.

Appellants have shown, by the published opinion of the Assistant Director of the Bureau of Land Management (JA 122), and by their own affidavits (JA 57, 61, 65, 90) that this regulation of the Secretary, though relied upon by appellee and admitted by him to be the basic issue in this case, did not apply to appellants' offers. The Assistant Director clearly confirmed that agency statements were required *only* if the agent selected the lands to be filed. Each appellant has sworn that he himself selected the lands. These facts alone refute the appellee's argument that the regulation 43 CFR 192.42(e)(4) is controlling. If the affidavits do nothing more, they establish a basic factual dispute that demands clarification.

On page 23 of his brief, appellee states "the hearing given appellants satisfies the due process requirements". Not only was no hearing ever given to these appellants, *no appellant was ever afforded any opportunity even to present written arguments to the Secretary covering the basic issue.*

One of the five parties whose lease offers were rejected by the decision of March 21, 1963 was W. C. Wells. Mr. Wells sought judicial review before the United States

District Court for the District of Alaska. *Wells* v. *Udall,* Civil Action No. A-37-63. In that action, the applicability of the agency regulation is clearly at issue. The defendant Secretary of the Interior has agreed to answer interrogatories on that subject as well as a request for admission of facts propounded by counsel for the plaintiff, W. C. Wells (see Exhibits "A", "B" and "C"). Two enlargements of time have been sought by the Secretary because of the extensive inquiry required. Thus, we see the Secretary in one case busily seeking answers to the substantial questions of fact involved, while at the same time in the present action involving the identical circumstances, he denies the existence of any factual issue and asks this court to confirm such denial. To repeat the comment of the Senate Judiciary Committee,

> The difficulty comes about in the practice of agencies to rely upon . . . suspicion, surmise, implications or plainly incredible evidence. It will be the duty of the courts to determine in the final analysis and in the exercise of their independent judgment, whether on the whole record the evidence in a given situation is sufficiently substantial to support a finding, conclusion or other agency action as a matter of law. *S. Rep. No. 752,* 79th Cong., 1st Sess. 30-31.

It remains to be seen whether the United States District Court for the District of Alaska will determine in its final analysis, in the exercise of its independent judgment, and following a proper review of all related facts, that the record before it does not support the Secretary's finding. The important thing is that the Secretary *has* submitted to fact-finding procedures in a case identical to this one. Yet, the Secretary and his counsel in this case continue to oppose a simple and inexpensive hearing under established procedures before one of the examiners already employed for such purposes. "Suspicion, surmise, implications . . ." are thus inevitably substituted for competent and substantial evidence.

This court should insist that the Secretary at least be consistent.

Esoteric arguments about "due process" and "what is a property right" are not the essence of this appeal. Neither are attempted comparisons between a short term lease to graze livestock on the public domain and a lease to extract valuable minerals therefrom so long as production continues. The decision to be reached in this case is whether the forces of bureaucracy have so far prevailed against the substantive safeguards of law and equity as to allow the destruction of a valuable statutory right by administrative caprice without any substantial evidence or even competent evidence; and whether, in any event, the record is so free from any genuine issue of fact as to allow summary judgment as a matter of law.

Respectfully submitted,

SHAW, PITTMAN, POTTS, TROWBRIDGE
& MADDEN
By M. S. MADDEN
Murdaugh Stuart Madden
910-17th Street, N.W.
Washington, D. C.

HOLMBERG AND POULSON
By JAMES S. HOLMBERG
James S. Holmberg
1700 Broadway
Denver, Colorado

Attorneys for Appellants

Exhibit "A"

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
DISTRICT OF ALASKA AT ANCHORAGE
P. O. BOX 680
ANCHORAGE, ALASKA 99501

Address reply to
"United States Attorney"
and refer to
HRH:cmw

September 10, 1964

Mr. Joseph Rudd
ELY, GUESS, RUDD & HAVELOCK
Attorneys at Law
P. O. Box 1332
Anchorage, Alaska

Dear Mr. Rudd:

Re: Wells v. Udall
Civil No. A-37-63

This is to confirm our conversation of today to the effect that the order allowing additional time in which to answer your interrogatories erroneously makes reference to moving against the interrogatories. It is our intention to answer your interrogatories in the additional time which you have kindly granted to us.

As you probably realized, the order which was submitted was prepared for use in connection with the original stipulation and should have been altered to conform to our stipulation in its final form. I regret this oversight on our part.

With kindest personal regards, I am

Sincerely yours,

JOSEPH J. CELLA
United States Attorney

By H. RUSSEL HOLLAND
Assistant U. S. Attorney

Exhibit "B"

ENDORSED FILED
in the United States District Court
for the District of Alaska
On: September 9 - 1964

United States Attorney
Room 131 Federal Building
Anchorage, Alaska, 99501
Phone BR 4-9201

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

Civil No. A-37-63

W. C. WELLS, *Plaintiff*,

v.

STEWART L. UDALL, Secretary of the Interior, *Defendant*.

Stipulation Enlarging Time to Answer Interrogatories

Subject to the approval of the Court, it is hereby stipulated by and between counsel for the plaintiff and counsel for the defendant that the defendant may have to and including 60 days from the execution hereof within which to answer the interrogatories and request for admissions of facts propounded by counsel for the plaintiff.

This stipulation is made because the scope and complexity of the interrogatories and request for admissions of facts will necessitate extensive inquiry and research by

the defendant, including collection and review of documentary material from case files and related records from land offices throughout the United States.

Dated this 5th day of September, 1964, at Anchorage, Alaska.

JOSEPH RUDD
ELY, GUESS, RUDD AND HAVELOCK
Attorneys for Plaintiff

JOSEPH J. CELLA
United States Attorney

By H. RUSSEL HOLLAND
Assistant U. S. Attorney
Attorney for Defendant

UNITED STATES OF AMERICA
DISTRICT OF ALASKA } ss

I, The Undersigned, Clerk of the District Court of the District of Alaska, do hereby certify that this is a true and full copy of an original document on file in my office as such clerk.

Witness my hand and the Seal of said Court this 2 day of Nov., 1964.

J. M. KRONINGER
Clerk of the District Court

By O. HAHN
Deputy

(Seal)

Exhibit "C"

ENDORSED FILED
in the United States District Court
for the District of Alaska
On: Aug. 18 - 1964

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

W. C. WELLS, *Plaintiff*,

v.

STEWART L. UDALL, Secretary of the Interior, *Defendant*.

Civil Action No. A-37-63

Interrogatories

To: United States Attorney,
Anchorage, Alaska

The plaintiff requests that the defendant answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. Was it the practice in any of the Land Offices of the Bureau of Land Management on or before October 1st, 1958, or between that date and December 28th, 1962, to require "agency statements" pursuant to 43 CFR 194.42 (e)(4) only when offers to lease had been signed by the agent or attorney-in-fact?

2. (a) Was the practice set forth in interrogatory No. 1 followed by the Denver Colorado Land Office during the period mentioned.

(b) Was the practice set forth in interrogatory No. 1 followed in the Fairbanks Alaska Land Office during the period mentioned.

(c) Was the practice set forth in interrogatory No. 1 followed in the Cheyenne Wyoming Land Office during the period mentioned.

(d) Was the practice set forth in interrogatory No. 1 followed in the Santa Fe New Mexico Land Office during the period mentioned.

3. Was the practice described in interrogatory No. 1, if it was the practice in any land office on or before October 1st, 1958, or between that day and December 28th, 1962, set forth in any regulation, manual, order, direction, or instruction; and was it approved, authorized, or recognized by any decision, memorandum, or opinion? If so, please specify the document or other source.

4. If the practice described in paragraph No. 1 was not followed in any land office on or before October 1st, 1958, or between that day and December 28th, 1962, set forth the criteria used in determining whether or not an "agency statement" pursuant to 43 CFR 192.42(e)(4) was to be filed, and the source of or authority for such criteria.

5. What were the factual situations presented in the speedmessage of January 9th, 1963, from the State Director, Bureau of Land Management, New Mexico, to which reference was made in paragraph 3 on page 2 of the Memorandum of January 17th, 1963, from James F. Doyle, Assistant Director, Bureau of Land Management, to the State Director, BLM, New Mexico, regarding *Eugenia Bate,* A-28519 (December 28, 1962)?

6. Does the Department of the Interior have in its possession a copy of, or has it ever seen a copy of, any written agreement between plaintiff herein and Transwestern Investment Company, Inc. or John J. King?

(a) If the answer is in the negative, from what sources was the conclusion drawn that plaintiff entered into an agreement with Transwestern Investment Company, Inc.

as set forth in *Evelyn R. Robertson et al,* A-29251 (March 21, 1963), or any other agreement with Transwestern Investment Company, Inc., or John J. King?

(b) If the answer is in the affirmative, what is the date of such agreement and if a copy is not in the possession of the Department of the Interior, when and where was it seen and in whose possession was it?

7. Do you have evidence that the funds submitted by plaintiff with his offer, here in question, were other than his own; if so, what is the evidence?

8. If plaintiff is not qualified to hold the Federal Oil and Gas Lease here in question, in what respects is he not so qualified?

9. Do you have evidence that plaintiff did not know or approve of the location of the tract in question prior to the execution of the offer here in question? If so, what is the evidence?

10. Do you have any evidence that the offer in question, or plaintiff's rights therein were assigned or were attempted to be assigned by an instrument signed in blank by plaintiff and delivered to Transwestern Investment Company, Inc., or John J. King? If so, what is the evidence?

11. Do you have any evidence that the offer in question or plaintiff's rights were assigned or were attempted to

be assigned without the prior approval of plaintiff? If so, what is the evidence?

DATED at Anchorage, Alaska, this 17th day of August, 1964.

ELY, GUESS, RUDD & HAVELOCK
Attorneys for Plaintiff

By s/ JOSEPH RUDD
Joseph Rudd

UNITED STATES OF AMERICA }
DISTRICT OF ALASKA } ss

I, The Undersigned, Clerk of the District Court of the District of Alaska, do hereby certify that this is a true and full copy of an original document on file in my office as such clerk.

Witness my hand and the Seal of said Court this 2 day of Nov., 1964.

J. M. KRONINGER
Clerk of the District Court

By O. HAHN
Deputy

(Seal)